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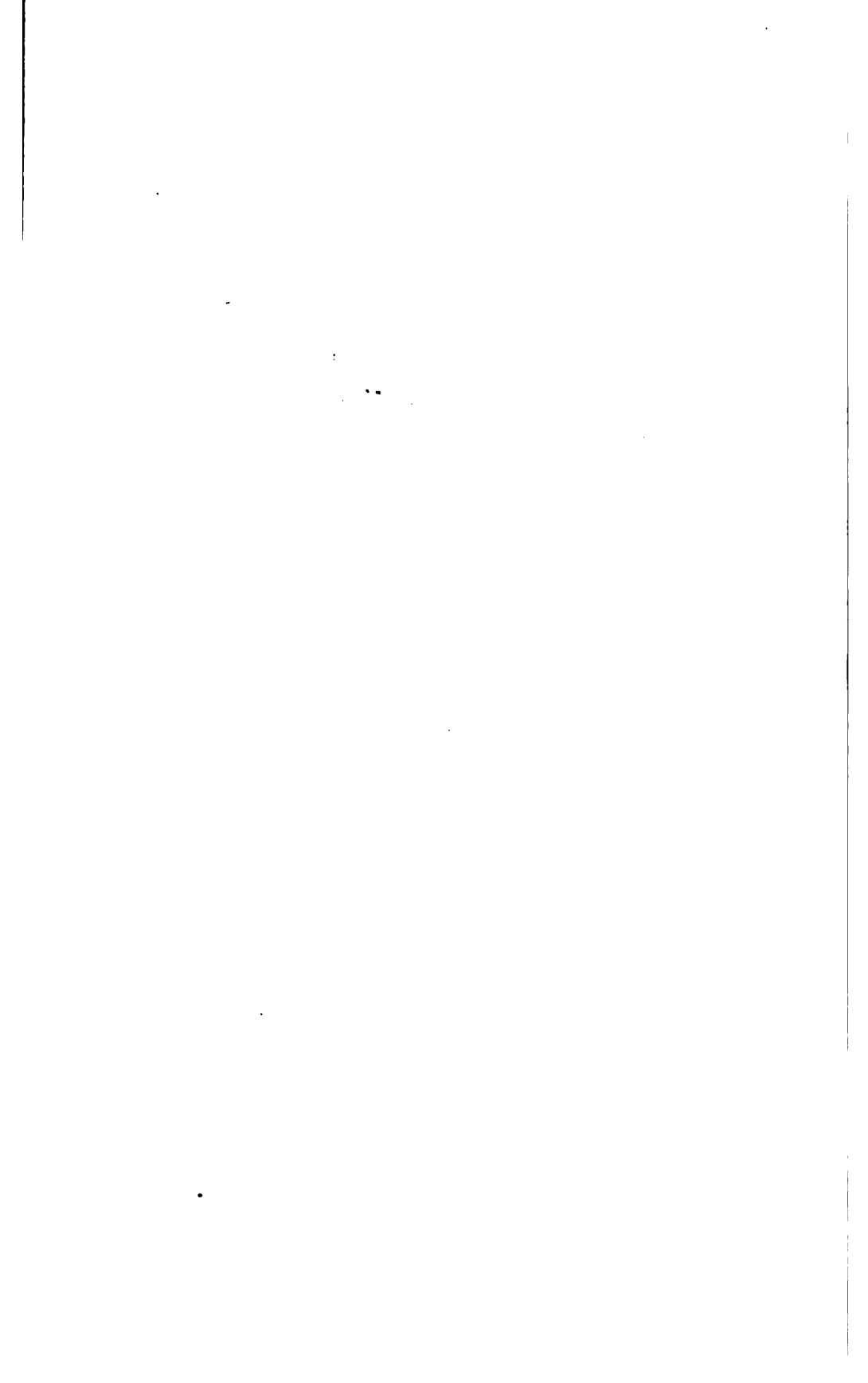
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AND
SOLICITORS' JOURNAL.

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CONTENTS OF VOLUME XLVIII.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

Income Tax, 46
 Commons Inclosure, 64
 County Court Extension Acts' Amendment, 121
 Income Tax (No. 2), 154
 Registration of Bills of Sale, 216
 Warwick Assizes, 218
 Attendance of Witnesses, 235
 Evidence in Ecclesiastical Suits, 254
 Commons Inclosure (No. 2), 254
 Cruelty to Animals, 275
 Ecclesiastical Jurisdiction, 276
 Highway Rates, 276
 Turnpike Trusts' Arrangement, 276
 Admiralty Court, 295
 Borough Rates, 296
 Acknowledgment of Deeds by Married Women, 297
 Stamp Duties, 317
 Court of Chancery, 334
 Bankruptcy, 335
 Real Estate Charges, 339
 Common Law Procedure, 1854, 356, 376
 Usury Laws Repeal, 396
 Bribery Act, 397, 415
 Youthful Offenders, 418
 Court of Chancery, County Palatine of Lancaster, 438
 Metropolis Sewers' Act, 450
 Prisoners' Removal, 475

PARLIAMENT.

Joint-Stock Company Mania—Executor and Trustee Society, 21
 Progress of South Sea and Executor and Trustee Companies' Bills, 73
 Registration of the Trust Clauses, 89, 115
 Professional opposition to Bills, 113
 Prorogation, 229
New Members of, 34, 69, 147, 390, 451, 512
Royal Assents, 510
 HOUSE OF LORDS' APPEAL CASES, 170
 LIST OF PUBLIC GENERAL ACTS, 447
 LIST OF LOCAL AND PERSONAL ACTS, 456, 470, 487, 509

PARLIAMENTARY REPORTS AND RETURNS.

Annual Chancery Account, 5
 Oral Evidence in Chancery, 51, 104
 Judges' Salaries, payable out of Consolidated Fund, 179
 Common Law Fees, 224
 State of Business in Masters' Offices, 262
 Business of Common Law Courts, 283
 Expense of administering Criminal Law, 104
 General Record Depository, 81
 Patents Commission, 463
 Bankruptcy Commissioners, proposed amendments and evidence, 41, 58, 363, 381
 Mercantile Law, 157, 177, 203, 264, 385, 402
 Limited Liability Partnerships, 157, 198, 393
 Consolidation of Statute Law, 258, 330, 413

NOTES ON RECENT STATUTES.

Equity Jurisdiction Improvement, 65, 80, 179, 262, 282, 304, 345, 344, 390
Administration of Oaths in Chancery, 139, 205, 491
 Counsel on hearing with assistance of Common Law Judge, 282

Stamp Duties' Act, 455
Succession Duties' Act, 1853, 445
Fines and Recoveries, 28

NEW BILLS IN PARLIAMENT.

Conveyance of Real Property Amendment, 4
 Criminal Procedure, 24
 Witnesses, 25
 Mortmain, 27, 77
 Common Law Procedure, 63
 Stamp Duties, 76, 136
 Testamentary Jurisdiction, 77
 Bills of Exchange, 121, 159, 269
 Fraud's Prevention in Bills and Notes, 136
 Warwick Assizes, 137
 Divorce and Matrimonial Causes, 154
 Repeal of Usury Laws, 175
 Court of Chancery, County Palatine of Lancaster, 175, 228
 Letters Patent for Inventions, 177
 Bankruptcy, 188, 195, 248
 Criminal Justice (Metropolis), 197
 Chancery Procedure Amendment, 198, 219, 255
 Acknowledgment of Deeds by Married Women, 219, 248
 Bribery Prevention, 220, 248
 Summary Execution on Bills, 173, 193, 220
 Admiralty Court, 236
 Real Estate Charges, 237
 Extension of Inclosure Acts, 237
 Abolition of Cinque Ports' Jurisdiction, 254
 Criminal Law Bills, 441
State of, 33, 213, 273, 295

LAW REFORM AND SUGGESTED IMPROVEMENTS.

Courts of Equity, 1
 Testamentary jurisdiction of Ecclesiastical Courts, 3
 Law of Property and Conveyancing, 4
 Site of new Courts of Law, 25
 City of London—Commissioners' recommendations, 49
 Taxes on administration of Justice, 57, 78, 106, 179
 Enfranchisement of copyholds, 123, 140, 184, 227, 243, 266, 287, 302, 344, 410, 426
 Local Courts of Equity—County Palatine of Lancaster, 233
 Proposed half-holiday on Saturdays, 267, 282, 348, 430, 446, 469
 Deposits on sales of estates by auction, 361
 Forfeiture of leaseholds on breach of covenants to insure and repair, 341
 Nonpayment of solicitors' costs, 348
 Consolidation of Stamp Acts, 382

COUNTY COURTS.

Reform of, 4
 Statistics, 29, 108, 141
 Rivalry of Superior and, 105
 Borough Courts, 188, 409
 Further extension—New Court of Appeal, Judges' promotion, 473

NEW RULES AND ORDERS.

Chancery:
 Times of proceeding—Practice at Judges' Chambers—Production of documents—Guardians—Office copies—Taxations, &c., 122
 Administration of Oaths, 28
 Reduction of folios to 72 words, 140

Taxation of costs—Solicitor's certificate of proper master, 160
 Order on petition to deliver bill of costs, 185
 Closing of Accountant-General's office, 188
 Transfer of causes, 227
 Lunacy, folios in, 299
 Vacation business, 305

Common Law:

Receiving money out of Court of Queen's Bench, 30

POINTS IN EQUITY.

Practice, 9, 31, 51, 81, 161, 243, 305, 325, 342, 366, 367, 390, 408, 429, 442
 Voluntary and incomplete settlements, 48

LAW OF VENDOR AND PURCHASER.

Rescinding contract after default of purchaser, 408
 Payment into Court of pecuniary charge on estate, 408
 Payment of interest where vendor in default, 429
 Sale under decree of lease with restriction, 429

LAW OF EVIDENCE.

Extrinsic evidence of description of legatee in will, 31
 Secondary evidence of deed, when receivable, 32
 In pedigree cases, 366

LAW OF COSTS.

Security for, 65, 80, 281, 428
 Vendor and purchaser, 32, 50, 304, 344
 Mortgagor and mortgagee, 223, 240, 428
 And see also 8, 52, 80, 126, 225, 304, 325, 544, 566, 408, 428, 483, 503

NOTICES OF NEW BOOKS.

Atkinson on Sheriff Law, 278
 Atkinson on Shipping Laws, 159
 Bourdin on the Land Tax, 300
 Bunyon on Life Assurance, 340, 364
 Foss on Lord Chief Justice Fitzjames, 369
 Francis on the Law of Charities, 7
 Fraser's Magazine—How to get on at the Bar, 367
 Hamel's Laws of the Customs, 27
 Husack on the Rights of British and Neutral Commerce, 419
 James on Building Societies' Mortgages, 462
 Ker's Common Law Procedure Act, 1854, 476
 Merrifield's Burgess's Manual, 324
 Oke's Law of Turnpike Roads, 46
 Pratt on the Prize Courts, 123
 Simmons' Warning Voice to Solicitors, 406
 Stowe (Mrs.) on English Law and Lawyers, 390
 Tudor on the Charitable Trusts' Act, 255
 Tudor on the Contract of Partnership, 137
 Winslow on Medico-Legal Evidence, 442

THE BENCH AND THE BAR.

Inns of Court Commission, 34, 52, 155, 270, 421, 433, 434
 Character of the late Lord Langdale, 349
 Memoir of the late Lord Denman, 453
 Recorder of Hull—Remission of punishment on juvenile offenders, 228
 Examination at Inns of Court, 82, 346
 Summer Circuits of the Judges, 144
 Barristers Called, 66, 145
 New Queen's Counsel, 228

ATTORNEYS AND SOLICITORS.

Taxation of costs, 6, 223, 239, 258, 280, 304, 343, 502
 Service of clerkship, 64, 79, 446

Solicitor acting as money scrivener for client—
 Liability for insufficiency of security, 30
 Action for disobedience to order for delivery of bill of costs under 6 & 7 Vict. c. 73, 49
 Striking off roll—Nonpayment of money, 104
 Conducting prosecution without authority, 104
 Bill of costs in pauper suit—Effect of dispaupering order, 125

Employment of solicitor by a married woman—
 Party chargeable—Lien on separate estate, 187
 Order of course to change solicitors, where special circumstances, 324

Arrangements and regulation of offices, 373
 Arrangement of business and plan of accounts, 313

Examination, educational and property qualification, 353, 409, 410, 491
 Service of four day order on non-delivery of bill, 389

Renewal of certificate, 446
 Town or country certificate duty, 446
 Solicitor and client—Liability of separate estate of married woman, 483

Remuneration of, 45, 153, 253, 287, 333
 Proposed Legal Benevolent College, 81
 Causes of unpopularity of, 79, 267

Admission of, 82, 83, 268, 287
 Renewal of certificates, 83

PROCEEDINGS OF LAW SOCIETIES.

Incorporated Law Society, 161, 229, 285, 305, 325

Law Association, 345
 Law Fire Insurance Society, 104
 Law Union Insurance Company, 184, 267
 Metropolitan and Provincial Law Association, 9, 141, 162, 183, 408, 465, 493, 495
 Law Students' Debating Society, 206
 United Law Clerks' Society, 164, 240
 Yorkshire Law Society, 446

ARTICLED CLERKS.

Examination questions, 10, 127
 Result of, 12, 108
 Information relating to, 51, 83, 483
 Candidates passed, 67, 186

Mutual Corresponding Society, 65

Queries, 32, 66, 410, 429, 504

Advice to, 427

SELECTIONS FROM CORRESPONDENCE.

See pages 33, 66, 83, 145, 187, 223, 226, 228, 247, 267, 309, 349, 391, 410, 430, 447, 469

LEGAL MISCELLANEA.

Common Law of England, 371

Story—Tidd, 371

Lawyers in Parliament, 371

Attorney Judges, 411

NOTES OF THE WEEK.

See pages 12, 34, 83, 109, 166, 229, 349, 469, 491, 503

Law promotions and appointments, 13, 34, 32, 69, 84, 109, 166, 209, 229, 248, 310, 371, 391, 407, 411, 512

Election auditors, 411, 431, 451, 491, 512

Legal obituary, 207, 484, 504

London Commissioners to administer oaths in Chancery, 12, 13, 146, 188, 350

Country Commissioners to administer oaths in Chancery, 68, 147, 247, 330, 431, 512

Perpetual Commissioners, 69, 147, 247, 330, 431, 491

Dissolutions of professional partnerships, 68, 146, 248, 330, 431, 512

The Legal Observer,

AND

SOLICITORS' JOURNAL.

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SATURDAY, MAY 6, 1854.  
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STATE OF LAW REFORM.

At the commencement of a New Volume, it will be convenient to take a brief review of the several measures before Parliament for the alteration or amendment of the Law; and in performing this task, we shall arrange or classify the various projects under the heads—1st. Of Equity. 2nd. Common Law. 3rd. Of Conveyancing. 4th. Of the Ecclesiastical Courts. 5th. Of the County Courts.

I. COURTS OF EQUITY.

It is remarkable that in the present Session, amongst the numerous Bills before Parliament, we are not called upon to include the Courts of Equity, which for the last quarter of a century, at least, stood as the foremost object of popular complaint. It seems that the Statutes of 1852 and 1853, with the various Orders of Court, have for the present silenced the reforming clamour; and time is allowed to digest and consider the alterations that have taken place, and test their efficacy by practical experience. There is, however, one important part of the recent changes in Equity Procedure, which is still under the consideration of the Chancery Commissioners, namely, the mode of taking *evidence*. Several questions have been issued, embodying the objections to the expense and delay of *viva voce* examinations, and inviting the practitioners to communicate to the Commissioners their opinion on the several objections which have been stated, and to state the remedies they suggest. These questions were published in our last Number, preceded by some observations and

suggestions, which we recommend to the consideration of our readers.

II. COMMON LAW.

1. Several important Bills in the department of Common Law are under the consideration of a Select Committee of the House of Lords. The most prominent of these is the Second Common Law Procedure Bill, founded on the last Report of the Common Law Commissioners. We are not aware that there is any material objection to the main features of this proposed amendment of the Law, by which expense will be saved and litigation expedited. It is much to be regretted that the all-absorbing topic of the war should thus suspend the progress of useful legislation in matters affecting the due administration of justice. We have no doubt that this measure, with the regulations of the Judges which might follow it, would go far to restore the public opinion in favour of our ancient tribunals, and put down that vulgar clamour with which they have been assailed.

2. Connected with this is a Bill to enable executions to be issued into any part of the United Kingdom on judgments obtained in any Court in England, Scotland, or Ireland; and to enable process to be served in any part of the United Kingdom. Thus affording more effectual means than now exist of enforcing pecuniary engagements. These are the measures which belong to the safe and useful department of Law Reform.

3. Next comes Lord Brougham's Bills of Exchange Bill, by which it is proposed to assimilate the Law of England to that of Scotland, enabling the holder of a dishonoured bill of exchange, after noting and protesting it, to register the debt — *de sa*

ment, which is to be deemed final unless the debtor appears and satisfies the Judge that he has a good defence, and gives security for the payment of the amount if decided against him. One objection to this measure is, that it will throw the burthen of negative proof on the defendant, instead of leaving the plaintiff to establish the affirmative. It also urged that where there is no defence to an action on a bill of exchange, the holder may, according to the present Law, obtain final judgment in eight days, and may issue execution in sixteen days. Further, it is objected, that to compel every party to a bill of exchange to find bail or submit to an execution because the acceptor has failed in discharging his obligation, will be an unjust and intolerable hardship, and must largely diminish the facilities now afforded in commercial business by these negotiable securities.

4. Another Bill of Lord Brougham, also before a Select Committee of Peers, is the Arbitration Bill, in regard to which it may be observed, that in the Common Law Procedure Bill, provision is made for compelling the parties to refer matters of account to arbitrators at an early stage of the proceedings, thereby preventing the delay and expense which now take place where either party rejects the offer of a reference.

5. The Declaratory Suits Bill of Lord Brougham can scarcely be objected to by the Profession. Its effect would be to render more efficacious, suits for the perpetuation of testimony and the settlement of anticipated claims, now rarely, if ever the subject of Bills *quia timet*. Perhaps, after all, the proposed new Statute may be as little resorted to as the old,—for remote events, distant contingencies, and doubtful questions, rarely excite men to action at the peril of considerable costs and doubtful success.

III. LAW OF PROPERTY AND CONVEYANCING.

1. Our readers are probably aware, that by almost common consent, the former project of registering all deeds and instruments relating to land, has been abandoned in favour of a plan for registering titles, and that along with the Act for such registration, there should be an alteration of the Law of Real Property, whereby the absolute legal estate should be vested in the owner or trustees, and that such legal estate should alone be registered, leaving the parties beneficially interested to protect themselves by entering caveats or "inhibitions," without incumbering the register.

Service on

with deeds of trust or other collateral instruments.

These primary and other important suggestions, are of course to be considered by the Real Property Commissioners, but it seems clear that no legislative measure can be brought forward in the present Session. The probability is, that the Commissioners will not be able to make their report during the present Session, and if they should complete it before the next Session it will be quite as much as can be reasonably expected. The last Real Property Commissioners were occupied about three years in taking evidence, considering the subject, and preparing their report. Let it be recollected that there is no question before the Public or the Profession of such magnitude, difficulty, and importance, as the alteration contemplated in our ancient, abstruse, and complicated system of Real Property Law; and therefore, we earnestly trust, that there may be no haste in considering all the various suggestions which have been made, in weighing all the arguments carefully, and coming to as safe a conclusion as the nature of the subject will permit. In the meantime the solicitors, especially those practising in the country, should continue their attention to the several plans which have been recommended for effecting a registration either of titles or of deeds.

2. The call for this branch of reform is chiefly occasioned by the amount of *conveyancing charges*, often much exaggerated, and which it seems impracticable materially to reduce, so long as the present rigid rules of taxation prevail. This brings us to the consideration of Lord Brougham's revised Bill for empowering, and indeed requiring the Taxing Masters to consider not merely the length of a deed or instrument, but the skill and labour employed and the responsibility incurred in the transaction.

This proposition was some years ago strongly resisted, and the Taxing Masters were, we believe, of opinion that the alteration was impracticable. It was, however, accompanied by an attempt to fashion all deeds upon one model, and to give a parliamentary signification to words and phrases inconsistent with, and often opposed to, their ordinary signification. So that, apart from all professional objections to the plan, the public would have been unable to understand their short-form leases or conveyances without constant reference to the Act of Parliament which defined their hidden meaning. Now, however, it appears that

the draftsman will be at liberty to prepare his deeds and documents in plain and intelligible English, in order that "those whorun may read;" but he cannot be remunerated for multiplying words, or providing with superabundant caution for possible misinterpretations or ingenious misconstructions of language. His reward will depend on the sound legal knowledge and scientific accuracy displayed in his compositions, and in the concise and clear expression of the intention of the parties, and the exclusion of all after doubts and difficulties. As, however, he is to be responsible for the sufficiency of his skill and labour, the extent of that responsibility should be estimated in the payment awarded for the work performed. For, it must be recollected, that whilst the solicitor adhered to established forms of conveyance and adopted a settled language to which the test of ages had been applied, he ran no risk, beyond the failure of his judgment in selecting the proper forms applicable to the transaction. Upon the whole, taking one case with another, he was adequately paid by a fixed rate on the length of the papers. Now, however, he is required to incur the responsibility, as well as the labour, of abridging the old settled forms, and skillfully manufacturing new instruments, the legal sufficiency of which may not be ascertained for years to come. The new rules of taxation consequently require to be very carefully considered before they are adopted, in order to provide for the contingencies that may arise in the various and complicated transactions in which solicitors are engaged.

3. On the subject of the Registration of Legal Instruments, our readers are aware that under recent Statutes warrants of attorney and the orders of Judges are required to be entered in the proper office, and the omission of such registration renders them invalid. Many frauds having been perpetrated, or unjust preferences given, under assignments or bills of sale of property, it has been proposed that such assignments should be registered in the same manner as warrants of attorney. A Bill for effecting this object has passed the House of Lords, and is now in a Committee of the House of Commons.¹

IV. TESTAMENTARY JURISDICTION OF THE ECCLESIASTICAL COURTS.

The Bill for transferring the Testamentary Jurisdiction of the Ecclesiastical Courts to the Court of Chancery has passed the House of Lords, but at present remains suspended in the House of Commons. As the Solicitor-General, it is understood, is strongly in favour of the measure, it may be presumed that he is controlled by the Government, and prevented from pressing it forward. It must be admitted that although the Court of Chancery, from the extensive improvements which have been effected in its procedure, stands before the public in a more favourable position than formerly, it is not yet so popular as to give it the preference over all other Courts as the successor of Doctors' Commons. Many would have supported a new and distinct Probate Court, who hesitate in adding the business to the Court of Chancery. Yet it must be admitted, that as in Chancery the construction of wills is for the most part decided, the several Judges of that Court are eminently qualified to deal also with the grant of probates and administrations.

The main difficulty, however, in effecting the change, consists in the necessity of giving a fair and just compensation to the advocates and proctors of the Ecclesiastical Courts. The officers, strictly so called, whether sinecurists, or performing valuable duties, are to be compensated for the loss of office; but the practitioners are offered only a limited exclusive practice in the New Court, which is grossly inadequate to satisfy their claims. This is the great difficulty to be overcome, and we cannot at present see how it can be effected. A large body of the solicitors who (with their brethren in general), would be benefited hereafter by being entitled to practise in testamentary matters, proposed, we understand, to petition the Legislature for a full compensation to the proctors, on the practice being thrown open forthwith; but the proctors object to this course, and a considerable number of London solicitors signed a petition in favour of continuing the testamentary jurisdiction in the same hands, subject to such improvement of the practice and course of proceeding as might be deemed expedient.

Thus the matter stands, and according to present appearances, it is not improbable that the Bill will be postponed till another Session, unless the advocates and proctors can agree with the Government on some modification of the scheme that may be sa-

¹ The projected *Joint-Stock Trust Company*, to which we have of late often adverted, should not pass unnoticed in this Summary of Professional Measures. We shall continue to give the earliest information on the subject.

The compensations paid out of the Suitors' Fund—6,605*l.* 5*s.* 9*d.*, and 48,370*l.* 4*s.* 1*d.* out of the Fee Fund, amounting to 54,975*l.*, and the salaries of the Masters and their clerks, amounting to about 30,000*l.*, which will cease on their deaths, will most probably at the expiration of 19 years have diminished to at least one-half their present amount. It has therefore been suggested, as a safe financial operation, that the 1,291,000*l.* stock purchased with surplus interest, and to which the individual suitors have no claim, and now yielding an income of about 38,000*l.* per annum, might be thus dealt with:—Purchase a Government annuity of 38,000*l.* per annum diminishing 2,000*l.* annually and terminating in 19 years, to meet the compensations which may be fairly estimated annually to diminish by this amount. A balance would thus be left applicable to the building of the proposed Courts of Justice.

A similar financial operation might be effected with respect to the 201,000*l.* stock purchased with surplus fees levied on the suitors, which is now liable to make good any deficiency in the Suitors' Fee Fund, but the liability imposed on this fund should then be transferred to the Consolidated Fund by a provision similar to the 2nd section of 4 & 5 Wm. 4, c. 68, or the 4th section of 11 & 12 Vict. c. 77.

An additional source of income will for the future be created by the carrying over under the authority of the 1st section of the Suitors' Further Relief Act to the credit of the Suitors' Fee Fund the further income of any stock in Court remaining on accounts not dealt with for 15 years. What this amount of income will be cannot be estimated with precision, but we believe it cannot be less than 7,000*l.* per annum, for it appears by a return to Parliament in 1850 that the amount of stock then remaining on accounts not dealt with for 10 years and upwards was no less than 314,543*l.*

LAW OF ATTORNEYS AND SOLICITORS.

TAXATION OF BILL OF COSTS OF EXECUTOR AND TRUSTEE BY PARTY INTERESTED IN REMAINDER.—COMMON ORDER.

It appeared that under a testator's will, Mr. Straford, a solicitor, was appointed one of the executors and also one of the trustees, and that considerable litigation had taken place in respect of the property in

this Court and in the Ecclesiastical Court, in which Mr. Straford acted as solicitor. In March, 1852, he delivered to his co-executor six bills of costs, of which the fourth had reference to an indictment for perjury. Upon a special petition by the party interested in remainder for a taxation, an objection was taken that the order should have been obtained as of course, under the 6 & 7 Vict. c. 73, and not by special petition. The *Master of the Rolls* said, "In this case no common order could have been granted. The case falls within the 39th section, and not under the third party or 38th section.

"The Court, under the 39th section, is to order a taxation, 'with such directions and subject to such conditions,' as the Court shall think fit, and must 'take into consideration the extent and nature of the interest of the party making the application.'

"I shall make the common order, reserving the costs." *In re Straford*, 16 Beav. 27.

Section 38 enacts, that "where any person, not the party chargeable with any such bill within the meaning of the provisions hereinafter contained, shall be liable to pay, or shall have paid, such bill, either to the attorney or solicitor, his executor, administrator, or assignee, or to the party chargeable with such bill as aforesaid, it shall be lawful for such person, his executor, administrator, or assignee, to make such application for a reference for the taxation and settlement of such bill as the party chargeable therewith might himself make; and the same reference and order shall be made thereupon, and the same course pursued in all respects as if such application was made by the party so chargeable with such bill as aforesaid." And s. 39, that "it shall be lawful, in any case in which a trustee, executor, or administrator has become chargeable with any such bill as aforesaid, for the Lord High Chancellor, or the Master of the Rolls, if in his discretion he shall think fit, upon the application of a party interested in the property out of which such trustee, executor, or administrator may have paid, or be entitled to pay, such bill, to refer the same, such attorney's or solicitor's, or executor's, administrator's, or assignee's demand thereupon, to be taxed and settled by the proper officer of the High Court of Chancery, with such directions, and subject to such conditions, as such Judge shall think fit, and to make such order as such Judge shall think fit, for the payment of what may be found due, and of the costs of such reference, to or by such attorney or solicitor, or the executor, administrator, or assignee of such attorney or solicitor, by or to the party making such application, having regard to the provisions herein contained relative to applications for the like purpose by the party chargeable

with such bill, so far as the same shall be applicable to such cases; and in exercising such discretion as aforesaid, the said Judge may take into consideration the extent and nature of the interest of the party making the application."

NOTICES OF NEW BOOKS.

The Law of Charities: comprising the Charitable Trusts' Act, 1853; with Explanatory Notes, Rules and Instructions for application to the Board of Charity Commissioners; the Orders regulating the Practice, in Chancery, in the County Courts, and District Courts of Bankruptcy, and Forms, Tables of Costs, &c., Precedents of Schemes for the Management of Schools and other Charities; and all the Statutes relating to Charitable Gifts and Trusts, with a Digest of Cases. By PHILIP FRANCIS, Esq., of the Middle Temple, Barrister-at-Law. London: Crockford, Essex Street. 1854. Pp. 255, xxxvi.

On the passing of an important Statute altering materially the existing Law, or the Practice of the Courts, there are two classes of books usually compiled by different gentlemen learned in the Law:—the one forthwith to present the writer's own version of the change effected, without waiting for the result of the practical working of the measure; the other class more carefully prepared, after the lapse of a sufficient period, and comprising the judicial construction which has been put on various parts of the Statute. Both kinds of publications possess their advantages: the one immediately, the other more permanently. It is convenient to the practitioner, busily engaged in his Profession, to possess an edition of the new Act, well analysed and arranged, with the rules and regulations made by the Court, and accompanied by a good index. References to the former state of the Law, and clear indications of the alterations made or intended, are of course highly useful.

Mr. Francis has selected a somewhat middle course. The Act passed last August, and he has waited, not only for the rules and regulations of the Commissioners, but for the Orders of Court prescribing the course of proceeding as well in the County Courts as in the Court of Chancery. And he has supplied a concise Digest of Decisions on the former Statutes relating to Charities. In due time the books will contain an abundant crop of

doubts and difficulties on the new Statute and Orders, unless they stand forth as "faultless monsters" of legal acuteness and perfection which hitherto has never been seen in Westminster Hall, even after a like incubation of 20 years.

The Author's Preface gives a concise review of the tardy progress and frequent postponement of the several measures in Parliament which preceded the Act of last Session. He says—

"In 1816 Lord Brougham commenced an attempt to induce the Legislature to take the necessary steps to prevent the abuse of Charities, and to protect the property belonging to them. And in 1854, we find an efficient Act having this object in operation. On its passing the House of Commons an eminent statesman, referring to these dates, stated that the interval was about the usual period required between the suggestion of an important reformatory measure and its becoming the law of the land. Be this so or not, it is to be hoped that this enactment, which, in arriving at maturity, consumed so much time and labour, and which now in its working engages so much talent and legal knowledge, will be found practically effective.

"When the Charitable Trusts' Bill was before the Committee in the House of Commons on 26th March, 1852, Sir Frederick Thesiger, then Attorney-General, offered some explanation of its scope and object: he said that 'he felt bound to state that the whole origin and merit of this important measure was due to the late Government. Those who had turned their attention to this question,—who knew the urgent necessity of a measure of the kind,—who were aware of the vast importance of the subject and the large amount of property that was to be affected by it,—who knew the inquiries that had taken place at a vast expense to the country year after year—the experiments that had been made in legislation and the failures that had accompanied them—must feel that those who had been able to frame a measure which would accomplish the benefits they believe it was so desirable to attain, and avoid all the objections that had been urged against former measures, certainly were entitled to a large debt of gratitude from the country.'

"Some of these 'experiments in legislation' were made by Lord Lyndhurst in 1844, 1845, and 1846, and by Lord Cottenham in 1847, 1848, and 1849; but until 1852 the attempts were ineffectual, and all the Bills introduced were dropped at some stage of their progress. In all the debates on the subject which took place there was, however, exhibited an anxiety that unnecessary interference with the managers of Charities should be avoided; and the principle of efficient visitation to all Charities was approved by all, save one or two individuals whose persistent habits of mind naturally induced an approbation of evil if it were old, and

of corruption if it were of gradual and constitutional growth.

Those interested in the history of this Act, and of the Charities which are its subject, may refer to an article in the *Edinburgh Review* of April, 1846 (vol. lxxxiii. p. 475), attributed to Mr. Senior, and an interesting chapter in a work recently published on Public Education by Sir James Kay Shuttleworth, and to the Speech and Letter of Lord Brougham already referred to.

There will be also found in the general and particular Reports of the former Charity Commissioners, and in the Digest of their Reports, and in the 'General Charities and Summaries,' an immense amount of valuable information on the subject. Some of the results of their calculations will be found in a later page of this work.

It has been attempted to make this book a practical and useful one; and for this purpose all the Statutes which are in force and which explain the Law of Charities and their Trusts, as established by the important Act of 1853, will be found here. A collection of cases has been also made in the hope that they will afford some assistance to those seeking the principles which must still, in a great measure, guide the management of Charities and administration of the funds."

The Author gives—1st, An Introductory Chapter; 2nd, An Analysis of the Provisions of the Charitable Trusts Act, 1853; and then treats—3rd, Of the Jurisdiction of the Courts and Legal Proceedings therein; 4th, Of the Treasurer of Public Charities and Official Trustee; 5th, Of the framing and certifying Schemes and carrying them out; 6th, Of exempted Charities, endowed, voluntary, and mixed.

The Act 16 & 17 Vict. c. 137, is then given verbatim, with notes on several of the sections. Next follow the Regulations and Instructions concerning Applications to the Board, and Forms of Application, &c. The Orders for regulating Proceedings by and before the Judges of the County Courts come next; and then the General Orders and Rules of the Court of Chancery.

The Appendix contains the Statutes relating to Mortmain and Charitable Uses, and other Statutes regulating Charitable Uses and Trusts, and the Administration of Charities; Statistics of Charities, Forms of Schemes, &c.

To which is added a Digest of Cases, arranged under the following heads:—1. What are valid Gifts to Charities—the Mortmain Acts;—Intention and objects of Gifts, how carried out;—Doctrine of cy pres;—Schemes. 2. Jurisdiction of Courts over Charities and Trustees;—Visitors;—Costs, &c. 3. Trustees, their Duties;—

Appointment;—Responsibilities and relation to Schoolmasters and other Officers;—Leases by Trustees. 4. Revenue of Charities; Surplus Income; Marshalling Assets, &c.

LAW OF COSTS.

OF EXECUTOR IN ADMINISTRATION SUIT.

THE costs of an administration suit were given to the defendant, an executor, notwithstanding he had made certain investments which had been declared to be improper, and was charged with the consequences. *Tobbs v. Carpenter*, 1 Madd. 290, was cited. *Knott v. Cottee*, 16 Beav. 77.

OPPOSING PROOF OF DEBT IN CHAMBERS, WHERE CLAIM FAILS.

This was a motion by the executors for the payment by a person, claiming to be a creditor, of the costs to which they had been put in opposing his claim on the estate of their testator, before the chief clerk.

The Vice-Chancellor *Stuart* said,—“This is a very important question. There is some justice in the observation, that it has hitherto not been the practice to make a creditor, going into the Master's Office to prove his debt, pay the costs of the attempt when unsuccessful. Under the old practice, however, the costs, generally speaking, could not be considerable, because the Master had no power to examine witnesses *videlicet* *voce*.

“Recently, the Legislature has thought fit to give power to the Judge's clerk, that is, to the Judge himself at Chambers, to take evidence. It is said, however, that the costs in question are not the costs of litigation; and that the creditor was prevented, by the order of this Court, from proceeding in a Court of Law, which was the proper tribunal, to establish his claim. The injunction was granted, because a Court of Law was not the proper tribunal, inasmuch as, when an administration suit is instituted, this Court, by its own proper jurisdiction, administers the assets in payment of debts or otherwise. Until the recent improvement in the practice, it was the duty of the Master to report on the debts; but when questions of difficulty arose, which not unfrequently happened, the Master having no means of settling the question, it was sent for adjudication before a jury, and the costs would in that case abide the result of the action at law.

"To cure that infirmity, and to save expense and delay, the Legislature authorised the Judges, by their clerks, to take the evidence of witnesses, in order to rebut the claims preferred at Chambers by creditors. In the present case, evidence was entered into, to contest the claim of Mr. Stanway upon the assets; expenses were incurred in Chambers in determining the question, which were greatly increased by the necessity of entering into evidence, in order to disprove the alleged debt. The creditor upon the evidence failed to prove his debt. Who then is to pay the costs of that inquiry? I think, if I were to allow the assets in course of administration to be diminished by the costs of resisting this unfounded claim, I should be guilty of injustice towards those who are entitled to the property of the testator. I shall, therefore, direct the costs of the executors incurred in resisting the claim, which the result has proved to be an unfounded claim, to be taxed and paid by the alleged creditor.

"It is said, I have no jurisdiction to make such an order, inasmuch as the creditor is not a party to the suit. I think he made himself a party by embarking in this litigation. If I have not the power to make him pay costs where he has put the estate to great expense by an improper claim, there would be a failure of justice, and if he had proved his debt, he would have been entitled to costs. In my opinion I have the power and the means of enforcing the order." *Hatch v. Searles*, 2 Smale, & G. 147.

POINTS IN EQUITY PRACTICE.

TAKING PLEA OFF FILE, WHERE CONSENT GIVEN FOR FURTHER TIME TO ANSWER ONLY.

At the expiration of three weeks' time, which had been obtained "to plead, answer, or demur, not demurring alone," the plaintiff's solicitors endorsed a consent on a warrant, asking for six weeks, for 14 days' further time "to answer." The order was, however, drawn up for 14 days "to plead, answer, or demur, not demurring alone," and the defendant put in a plea of the plaintiff's insolvency; it was taken off the file with costs, and the order for time was varied by confining it to the leave to answer only. *Brooks v. Purton*, 1 Y. & C., Ch., 278, and *Chambers v. Howell*, 12 Beav. 563, were cited. *Newman v. White*, 16 Beav. 4.

APPORTIONMENT OF FUND IN ADMINISTRATION CLAIM AMONG PARTIES ON AFFIDAVIT.

At the hearing of a claim by the surviving executor to administer his testator's estate, a reference was directed to the Master to ascertain the parties beneficially interested, and he reported that the fund was divisible in equal shares among 16 persons. An apportionment was ordered to be made on the affidavit of the plaintiff, the testator's representative. *Bear v. Smith*, 5 De G. & S. 92, was cited. *Roberts Collett*, 1 Smale & G. 138.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

The Annual General Meeting of this Association was held on Wednesday, the 19th of April at the Offices, 8, Bedford Row. E. S. Bailey, Esq., in the Chair.

The Annual Report of the Committee of Management was read by the Secretary, Mr. W. Shaen, after which the following resolutions were adopted:—

Resolved,—1. That the Report of the Committee of Management be received and adopted, and that it be printed and circulated under the direction of the Committee.

2. That the cordial thanks of the Association be presented to the Committee of Management for their labours during the past year.

3. That the following Members of the Association be elected Members of the Committee of Management for the ensuing year:—

Chairman.

Mr. E. S. Bailey.

Deputy Chairmen.

Mr. T. H. Bower.

Mr. J. Sangster.

Metropolitan Solicitors.

Mr. R. B. Armstrong.

Mr. G. Faulkner.

— Keith Barnes.

— E. W. Field.

— James Beaumont.

— Harvey Gem.

— William Bell.

— J. S. Gregory.

— E. Benham.

— Henry Karslake.

— George Bower.

— T. Kennedy.

— James Burchell.

— H. Lake.

— E. F. Burton.

— Edwd. Lawrance.

— Edward Chester.

— C. J. Palmer.

— Henry C. Chilton.

— W. H. Palmer.

— W. S. Cookson.

— J. J. J. Sudlow.

— F. N. Devey.

— John Young.

— Charles Druce.

Provincial Solicitors.

Mr. T. F. Champney, *Beverley*.

— C. Ingleby, *Birmingham*.

— Arthur Ryland, *Birmingham*.

Mr. John Greene, *Bury St. Edmunds.*
 — J. Sparke, *Bury St. Edmunds.*
 — John Nanson, *Carnisle.*
 — F. Potts, *Chester.*
 — R. T. Brockman, *Folkestone.*
 — John Burrup, *Gloucester.*
 — F. L. Bodenham, *Hereford.*
 — John Hill, *Hull.*
 — T. Holden, *Hull.*
 — William Henry Moss, *Hull.*
 — C. H. Phillips, *Hull.*
 — G. L. Shackles, *Hull.*
 — George Stamp, *Hull.*
 — Thomas Thompson, *Hull.*
 — S. B. Jackaman, *Ipswich.*
 — John Sharp, *Lancaster.*
 — Robert Barr, *Leeds.*
 — John Bulmer, *Leeds.*
 — J. H. Shaw, *Leeds.*
 — T. Avison, *Liverpool.*
 — M. D. Lowndes, *Liverpool.*
 — R. A. Payne, *Liverpool.*
 — H. H. Statham, *Liverpool.*
 — Jas. O. Watson, *Liverpool.*
 — E. A. Bromehead, *Lincoln.*
 — J. Case, *Maidstone.*
 — J. F. Beever, *Manchester.*
 — J. Crossley, *Manchester.*
 — N. Earle, *Manchester.*
 — James Street, *Manchester.*
 — J. Sudlow, *Manchester.*
 — Thomas Taylor, *Manchester.*
 — G. Thorley, *Manchester.*
 — William Crichton, *Newcastle-upon-Tyne.*
 — William Skipper, *Norwich.*
 — H. B. Campbell, *Nottingham.*
 — R. Enfield, *Nottingham.*
 — W. Hunt, *Nottingham.*
 — Joseph Peers, *Ruthin.*
 — J. Webster, *Sheffield.*
 — J. R. Wilson, *Stockton.*
 — T. Burn, jun., *Sunderland.*
 — W. Beaumont, *Warrington.*
 — John Lewis, *Wrexham.*
 — Thomas Hodgson, *York.*
 — George Leeman, *York.*
 — G. H. Seymour, *York.*

4. That Mr. Newstead and Mr. Bromley be requested to act as auditors for the ensuing year.

5. That the best thanks of the meeting be presented to Mr. Bailey for his able conduct in the Chair.

QUESTIONS AT THE EXAMINATION.

Easter Term, 1854.

I. PRELIMINARY.

1. WHERE, and with whom, did you serve your clerkship?
2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.
3. Mention some of the principal law books which you have read and studied.

4. Have you attended any, and what, law lectures?

II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

5. What should appear by an affidavit in support of an application to proceed against a defendant within the jurisdiction, as if personal service had been effected?

6. In what cases may a special indorsement be made on a writ of summons of the particulars of the plaintiff's claim, and what is the consequence of an omission to make such indorsement, should the defendant not appear, having been served with the writ?

7. What are the modes of proceeding in a town cause by which a defendant can compel the plaintiff to proceed to trial after issue joined, and how soon after issue joined can such proceedings be taken?

8. If a tender be made and refused before action, what steps should be taken to prevent the party availing himself of it by plea in any action to be afterwards commenced?

9. Is there any, and what restriction to a husband's liability for the debts of his wife contracted before marriage?

10. In an action against executors for a debt due by their testator, which of the executors should be joined as defendants?

11. Name the contracts required to be in writing by the 4th section of the Statute of Frauds.

12. What circumstances will render a contract for the sale of goods for the price of 20*l.* or upwards valid, if no memorandum in writing of the bargain be made and signed by the parties?

13. The payee of an inland bill of exchange dishonoured is desirous of enforcing payment against the drawer, what inquiries should be made by his attorney to ascertain that his cause of action is complete?

14. What is put in issue by the plea of never indebted to an indebitatus count for goods sold and delivered?

15. Within what time ought notice of the dishonour of an inland bill accepted for value to be given to the drawer and indorser by the holder?

16. What liability does a factor incur by the receipt of a *del credere* commission?

17. What things are by law privileged from distress for rent?

18. Who should be named as a plaintiff in writ of ejectment, and to whom by name should the writ be directed?

19. What is the mode by which a defendant in ejectment may, if he think proper, limit his defence to part of the premises sought to be recovered?

III. CONVEYANCING.

20. Taking an estate tail as one kind or class, what are the different kinds or classes of estates which may be limited or created in lands and hereditaments?

21. What are the words of limitation pro-

perly to be used in a deed in creating each respective class?

22. If land be devised by will or limited by deed to *A*, for life, with remainder to his right heirs, what estate does *A*. take?

23. How is an estate tail now to be barred by a tenant in tail in possession?

24. Under what circumstances can a tenant for life in possession cut timber for his own benefit?

25. What is the mode by which the dower of a wife married since 1st Jan., 1854, may be barred by her husband?

26. Is a purely voluntary settlement good against a purchaser or a mortgagee for valuable consideration who has notice of it?

27. What is the difference between the covenants for a title usually and properly inserted, and to be entered into by a mortgagor in a mortgage deed, and by a vendor in a conveyance to a purchaser of real estate?

28. In making a mortgage of a leasehold estate, how would you protect the mortgagee from liability to pay the rent and to perform the covenants in the original lease?

29. *A*. makes a mortgage in fee to *B*.,—*B*. dies intestate,—who is competent to release the mortgage debt and reconvey the estate to the mortgagor, and if the mortgage had been for a term of years, answer the same question under the same circumstances.

30. State the formalities requisite for the due execution of a will since the Act 7 Wm. 4, & 1 Vict. c. 26.

31. Previous to that Act, how many witnesses were required to a will devising real estate?

32. When land is devised to *A*., without words of further limitation, what estate passes?

33. To whom will a lapsed devise of real estate in a will made since 1st January, 1838, pass?

34. *A*., seised and possessed of real and personal estate, dies intestate, leaving a widow, an eldest son, two daughters, and two grandchildren (the issue of a younger son), on whom do his real and personal estate devolve, and in what shares and proportion?

IV. EQUITY AND PRACTICE OF THE COURTS.

35. Has any recent alterations been made as to parties to a suit in equity? If so state your authority, and give one or two examples.

36. What are the modes of emanating proceedings in the Court of Chancery at the present time?

37. How is a defendant brought before the Court?

38. If a defendant file an answer to the plaintiff's bill, without being required to do so, what time has the plaintiff to amend his bill "as of course"?

39. When is the proper time, in a suit commenced by bill, for a motion for a decree? What notice of it must be given; to whom is it to be given; and what parties does it bind?

40. How is evidence given and taken in the Court of Chancery, and by what mode of tak-

ing evidence do you consider the truth is arrived at the nearest?

41. What is a commission to examine witnesses, or to take pleas, answers, disclaimers, or examinations, and in what cases is it necessary?

42. What is an injunction? When is it to be applied for; how is the application to be supported; how is it put in force, and how dissolved?

43. What proceedings in the Court of Chancery operate as *Lis pendens*, and how do you avail yourself of them?

44. A testator, by his will, charges his real estate with payment of an annuity and the legacies given by his will. The personal estate is absorbed and the real estate is insufficient to keep down the payments of the annuity. What is the effect upon the annuity and legacies under these circumstances?

45. Is an executor justified in paying a debt of his testator which is barred by the Statute of Limitations?

46. If it become necessary in a suit by a husband, on behalf of his children, to which his wife is not a party, for the wife by her next friend to intervene by way of petition, and the husband oppose the prayer, and appeal from the order made in accordance with the petition, and the appeal be dismissed; how are the wife's costs to be provided for?

47. What security can a husband and wife give upon a property to which the wife is entitled on the happening of a future event?

48. If a marriage settlement be lost or destroyed, how is it possible to carry out the trusts?

49. What protection is afforded by a Court of Equity to infants?

V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

50. What is the difference of jurisdiction in bankruptcy and insolvency, as respects the persons subject to such jurisdiction, and the liability of their future effects?

51. What are the three conditions required to constitute a bankrupt?

52. State the principle which determines whether a person is a trader within the meaning of the Bankrupt Laws, in respect of the extent of trading.

53. Enumerate the different acts of bankruptcy.

54. What new acts of bankruptcy were created by the Statute 5 & 6 Vict. c. 122.

55. If a debtor, liable to the Bankrupt Laws, has not committed an act of bankruptcy, how can he be proceeded against, in order to make him a bankrupt?

56. What is the effect of a declaration of insolvency? And within what period must a petition founded thereon be filed?

57. Can an act of bankruptcy be committed by a party after he has left off trading? And if so, is the period at which the petitioning creditor's debt accrued, in any, and what, particular material?

58. In *ex* adjudication against partners must an act of bankruptcy be proved against each partner, or will the act of bankruptcy of one of such partners be sufficient?

59. Is a conveyance or assignment of all a trader's property deemed an act of bankruptcy, or are there any, and what, exceptions or conditions?

60. After what lapse of time, from an act of bankruptcy committed, does a trader cease to be liable to be made a bankrupt on that act of bankruptcy?

61. Are there any, and what, means by which a trader can effect an arrangement with his creditors, and be discharged from his debts without a petition for an adjudication in bankruptcy, or proceeding under the Insolvent Debtors' Act?

62. What particulars are necessary to be stated in an affidavit or deposition, to prove a debt under an adjudication?

63. Can joint creditors prove on the separate estate, or separate creditors on the joint estate? If so, how can they interfere in the proceedings of the bankruptcy?

64. If a bankrupt be possessed of leasehold property at the time of his bankruptcy, which is not considered by his assignees to be of any value, what course should they adopt in reference to the leases?

VI. CRIMINAL LAW, AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

65. What is an indictment?

66. Into what three classes are indictable offences generally divided?

67. Describe, shortly, the nature of the proceedings by which a person charged with an indictable offence may be brought before a justice of the peace, and committed for trial.

68. What recent Act of Parliament regulates the proceedings of justices with reference to persons charged with indictable offences?

69. What are the Courts at which indictable offences are usually tried in each county, and how often are they respectively held?

70. Mention some of the offences which Courts of Quarter Sessions have no power to try, and the Statute which defines those offences?

71. What is the difference between a principal in the second degree, and an accessory before the fact?

72. Are there any indictable offences in which there can be no accessories? if so, what are they? Give the reasons for your answer?

73. What is the difference between *Murder—Manslaughter—Justifiable Homicide*—and *excusable Homicide*? Give instances exemplifying your answer.

74. How far is it necessary in an indictment for murder or manslaughter to describe the means by which the offence was committed, and what recent Statute has lately been passed to simplify the forms of such indictments?

75. Define the offence of larceny at Common Law.

76. If a servant in the course of his employ-

ment receive money from a third person on account of his master, and fraudulently appropriate it to his own use, of what offence is he guilty?

77. Describe the offence of perjury, and say how it is punishable by the Common Law, and by Statute.

78. Define the offence of forgery, and uttering forged instruments.

79. What is the ordinary evidence required to prove guilty knowledge in uttering a forged instrument?

LONDON COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

Cooper, Wm. Bush, 3, Verulam Buildings.

Housman, George, 25, College Hill, City.

Iliffe, John, 2, Bedford Row.

Impey, Francis, 12, Bedford Row.

Ivimey, Joseph, 30, Southampton Buildings, and 1, Amptill Square, Hampstead Road.

Norton, Henry Elland, 3, Park Street, Westminster.

Parker, Robert Christopher, Blue Style, Greenwich.

Potter, Samuel, sen., 36, King St., City.

Rose, Philip, 3, Park Street, Westminster.

Sweeting, Robert, 29, Lombard St., City.

[For the previous Lists, see the last Volume, pp. 106, 161, 238, 301, 383, 402, 463, 497.]

NOTES OF THE WEEK.

ADMISSION OF SOLICITORS.

THE Master of the Rolls has appointed *Thursday* the 11th of May instant, at the Rolls Court, Chancery Lane, at four in the afternoon, for swearing Solicitors.

Every person desirous of being sworn on the above day must leave his Common Law Admission or his Certificate of Practice for the current year at the Secretary's Office, Rolls Yard, Chancery Lane, on or before *Wednesday*, the 10th inst.

RESULT OF THE EXAMINATION.

We have collected the following particulars on the subject of the Examination of Candidates for Admission on the Roll of Attorneys in the present Term:

The Examination took place at the Law Society's Hall, on *Tuesday*, the 2nd instant. Master Johnson, of the Court of Exchequer, presided, and the other Examiners (Members of the Council) were Mr. Leman, Mr. Pemberton, Mr. White, and Mr. Williams. The number to be examined was 136, but upwards of 20 did not complete their testimonials of due service, and some who were entitled to attend were absent. The number was thus reduced

to 107;—of whom 101 were passed, five postponed, and one received a special certificate on a question submitted to the Court regarding the sufficiency of the service of the clerkship.

LONDON COMMISSIONS TO ADMINISTER OATHS.

Upwards of 300 Commissions to administer Oaths in Chancery having been granted to London Solicitors, residing in various parts of the Metropolis, we understand the Lord

Chancellor intends to suspend the grant of further Commissions, at all events for the present.

LAW APPOINTMENT.

William Govett Romaine, Esq., Barrister-at-law has been appointed Deputy Judge Advocate for local service with the troops employed on a particular service to the eastward of *Malta*. From the *London Gazette* of 28th April.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lords Justices.

In re Minnitt, ex parte Russell. April 28, 1854.

BANKRUPTCY.—ALLOWANCE TO OFFICIAL ASSIGNEE FOR PREPARING BALANCE-SHEET.

Held, that the official assignee in bankruptcy is not entitled to be allowed a fee for preparing the balance-sheet of a bankrupt under the 12 & 13 Vict. c. 106, s. 160,—such preparation being inconsistent with his duty of examining the same.

It appeared that in the Leeds district, and in part of the Birmingham district, a sum of 20 guineas was allowed to the official assignee for preparing the balance-sheet of a bankrupt, and also a similar sum for examining the same.

By the 12 & 13 Vict. c. 106, s. 160, it is enacted, that “the bankrupt shall prepare such balance-sheet and accounts, and in such form as the Court shall direct, and shall subscribe such balance-sheet and accounts, and file the same in Court, and deliver a copy thereof to the official assignee 10 days at least before the day appointed for the last examination, or the adjournment day thereof for that purpose,” “and the Court may, on the application of the assignees, or of the bankrupt, make such allowance out of the estate of the bankrupt for the preparation of such balance-sheet and accounts, and to such person as the Court shall think fit, in any case in which it shall be made to appear to the satisfaction of the Court, from the nature of the accounts or other good cause, that the bankrupt required assistance in that behalf.”

James and Hardy, for the creditors’ assignee, contended that the allowance of a fee for preparing the balance-sheet was not authorised by the Act.

Bacon and Prior for the official assignee.

The Lords Justices said, that it was the duty of the official assignee to correct and examine the balance-sheet prepared by the bankrupt, and such duty was inconsistent with that of preparing the balance-sheet. The principle applicable was similar to that in respect of receivers, to which office a Master could not be appointed as he had to check the accounts, nor a committee of a lunatic for a similar reason, and on the same ground a bankrupt who had been appointed assignee of his own estate had been removed by the Court. The payment could

not be allowed, and must therefore be struck out of the account.

Ex parte Bailey and another, in re Burrell. April 22, 28, 1854.

BANKRUPT TREASURER OF BENEFIT BUILDING SOCIETY.—PROOF BY TRUSTEES IN PRIORITY TO OTHER CREDITORS.

Held, dismissing with costs a petition of appeal from *Mr. Commissioner Goulburn*, that the trustees of a benefit building society are not entitled under the 12 & 13 Vict. c. 106, s. 167, to be paid in priority to the other creditors, the amount due to their society by a bankrupt treasurer—the 167th section being confined to societies established under the Acts relating to Friendly Societies.

THIS was a petition of appeal from the decision of *Mr. Commissioner Goulburn*, refusing to allow a claim by the trustees of the *Barnstable and Chafford Benefit Building Society* for payment out of the estate of a bankrupt treasurer of the amount which he owed to the society. It appeared that the trustees had not taken proper security from the bankrupt before appointing him as treasurer.

Swanston and Terrell for the trustees, in support; *Rolt and Bagley* for the assignees, contra.

Cur. ad. vult.

The Lords Justices said, that the 12 & 13 Vict. c. 106, s. 167,¹ was confined to societies established under the Friendly Societies’ Acts,

¹ Which enacts, that “if any person, already appointed or employed, or who may be hereafter appointed to or employed in any office in any society established under any of the Acts relating to Friendly Societies, and being interested with the keeping of the accounts, or having in his hands or possession, by virtue of his office or employment, any moneys or effects belonging to such society, or any deeds or securities relating to the same, shall have been or shall become bankrupt, the Court shall, upon application made by the order of any such society, or any committee thereof, order payment and delivery over to be made to such society, or to such person as such society or committee may appoint, of all moneys and other things belonging to such society,—and shall

and did not include the present society, which was under the Acts relating to Benefit Building Societies. The Consolidation Act appropriated the estate for the benefit of all creditors equally, and it would be therefore inconsistent to give full payment to any one not specially provided for by the Act. The Commissioner had decided the case irrespective of the fact, whether the entries in the bankers' pass-book were or were not genuine, and it was unnecessary to give any opinion on that question. The petition would be dismissed with costs.

Master of the Rolls.

Rowe v. May and another. May 2, 1854.

VENDOR AND PURCHASER.—SPECIFIC PERFORMANCE.—LOSS OF PORTION OF DEPOSIT ON INSOLVENCY OF AUCTIONEER.

Certain property was put up to auction under a power of sale contained in a mortgage, subject to certain conditions of sale, and the plaintiff afterwards purchased, subject to such conditions, and paid a deposit to the auctioneer in accordance therewith: Held, that upon the insolvency of the auctioneer and consequent loss of a portion of the deposit, the vendors, and not the vendee, must bear the loss, and on a suit by the vendee, a decree for a specific performance was made on payment of the purchase-money less the amount deposited.

THIS was a suit for the specific performance of an agreement for the sale to the plaintiff of certain premises at Camberwell. It appeared that the defendant, Mr. Wm. D. Pritchard had mortgaged to the defendant, Mr. Jas. B. May, for a term of years, with a power of sale, and that the property had been put up under the power to auction, subject to certain conditions of sale, but had been afterwards purchased by the plaintiff for 630*l.*, subject to such conditions of sale. A deposit of 120*l.* was paid thereunder to Mr. Mills, the auctioneer employed by the vendors, and an abstract of title to the property was forwarded to the plaintiff's solicitor, but ultimately an arrangement was made, in consequence of there being many judgments against Mr. Pritchard, for the purchase of the term of years at a small reduction in price. Before, however, the matter was completed, the auctioneer became insolvent, and 50*l.* only of the deposit could be recovered, and the question now arose whether the plaintiff or the vendors were to bear such loss.

Schwyn and Horsey for the plaintiff; *R. Palmer and Goldsmith* for the defendant.

The Master of the Rolls said, that the auctioneer had been employed by the vendors, and it would therefore be unjust to make the vendee share in the loss occasioned by his in-

solveny, and there must be a specific performance on payment of the purchase-money less the amount deposited.

Vice-Chancellor Kindersley.

In re Hardy's Estate, ex parte Sheffield Junction Railway Company. April 24, 1854.

RAILWAY COMPANY.—PURCHASE OF LAND.—COSTS OF ABORTIVE PETITION BY TENANT FOR LIFE FOR RE-INVESTMENT.

Where on a reference to the chief clerk, upon the petition of the tenant for life, for the investment of the proceeds of lands taken by a railway company, the certificate is against the investment: Held, that the costs of the railway company must come out of the fund.

IN this petition by the tenant for life for the investment of the proceeds of certain land taken by the above railway company, the chief clerk had on a reference certified against the investment as inadvisable, it being in houses and not land. A question now arose as to the costs.

Fooks, for the petitioner, cited *In re Woolley's Estate*, 17 Jur. 850; *Ex parte Stevens*, 15 Jur. 243; *Humphreys* for the railway company.

The Vice-Chancellor said, that the cases cited only applied when the investment proposed was proper and unobjectionable. The order would therefore be for the payment of the company's costs out of the fund in Court, and no order would be made on the petition.

Roberts v. Roberts. April 29, 1854.

WILL.—CONSTRUCTION.—CLAIM OF NEXT OF KIN AGAINST HEIRESS AT LAW.—REFERENCE TO CHAMBERS AS TO PROCEEDINGS.

A railway company contracted for the purchase of land with the surviving tenant for life, who soon afterwards died, and her next of kin claimed under a will against the heiress-at-law of her sister, and nine out of the ten next of kin applied for leave to take proceedings against the heiress-at-law to determine their right. A reference was directed at Chambers as to what proceedings should be taken, with liberty to any of the next of kin to authorise the personal representative to take the same.

IT appeared that certain lands had been taken by the Chester and Holyhead Railway Company, under a contract with Catherine Lloyd, the surviving tenant for life thereof, and which were devised under the will of a testator to Hugh Lloyd for life, with remainder to his first and other sons in tail male, with remainder to his sisters Jane and Catherine Lloyd for life, as tenants in common, with remainder to trustees to preserve contingent remainders, with remainder to their first and other sons in tail, with remainder to the testator's own right heirs. Hugh Lloyd died without children before the testator and in the life-

also order payment out of the estate and effects of the bankrupt of all sums of money remaining due, which the bankrupt received by virtue of his said office or employment, before any other of his debts are paid or satisfied."

time of his sisters, without issue, having left the property to trustees for a term of years to be computed from the death of his surviving sister, in trust for their respective right heirs as tenants in common. Jane Lloyd predeceased her sister Catherine, who died a few months after she had entered into the contract with the railway company, and her next of kin (of whom there were ten, but one declined to join therein) now applied for leave to take proceedings against the sister's heiress-at-law, who claimed her moiety as unconverted, to determine the right.

Amphlett and Bazalgette in support, citing *Adams v. London and Blackwall Railway Company*, 2 M. & G. 118; *Ex parte Flamank*, 1 Sim. N. S. 260.

Cairns, contra.

The Vice-Chancellor, without giving any opinion on the question, said, that a reference must be directed at Chambers as to what proceedings should be taken—with liberty to any of the next of kin to authorise the personal representative to take such proceedings.

Cook v. Gregson. April 29, 1854.

ADMINISTRATION OF ASSETS. — PRIORITY OF PAYMENT OF IRISH DEBTS OUT OF IRISH ASSETS.

¶ A testator died in Ireland owing debts there and in this country, but his executors collected the Irish assets and brought them here: Held, that the Irish debts were to be paid out of the Irish assets in priority to the English debts.

It appeared that the testator had died in Ireland, and that his executors had collected the Irish assets and brought them to this country. The testator owed debts in both countries.

The Vice-Chancellor said, that it was the duty of the executors to have paid the debts in Ireland before they brought over to this country any part of the Irish assets, and that payment of such debts must be therefore made before the English debts.

Toller, Giffard, and Cotton for the several parties.

Vice-Chancellor Stuart.

Nichens v. Kelly. April 28, 1854.

FORECLOSURE SUIT. — TRUSTEE OF MORTGAGE.—OUTSTANDING LEGAL ESTATE.—PARTIES.

Held, that the trustee of a mortgage, where no transfer is taken on its being paid off is a necessary party to a suit to foreclose the mortgage, although he undertook to execute a transfer on its being tendered.

The testator, in December, 1824, had assigned certain leasehold property in Cornwall by way of mortgage to Mr. Wm. T. Reynolds to secure a sum of 600*l.*, with interest, advanced by Mrs. Sarah Clarke, and by his will he gave all his leasehold property to his son

and the plaintiff, in trust by sale or mortgage to pay his debts, &c. It appeared that the plaintiff paid the amount secured by the deed of December, 1824, to Mr. Reynolds, who gave a receipt for the same, but that no transfer of the mortgage was executed, and he undertook to execute a transfer on its being tendered. This bill was now filed for a foreclosure, and an objection was made that Mr. Reynolds should have been made a party.

Craig and T. H. Terrell, in support of the objection, cited *Wood v. Williams*, 4 Madd. 186.

Bacon and W. A. Collins for the plaintiff; *Wigram and Coryton* for the trustees; *Shebbear* for other parties.

The Vice-Chancellor said, that the case must stand over, with liberty to amend by adding parties.

In re Forbes, ex parte Buckinghamshire Railway Company. April 28, 1854.

RAILWAY COMPANY. — COSTS OF ADVERSE CLAIMANT ON PETITION FOR INVESTMENT OF PURCHASE-MONEY OF LANDS.

F. had, on the hearing of a petition by infants for the investment of the proceeds of land taken by a railway company, appeared adversely, but his claim was disallowed, and an order made as prayed, with costs of the petitioners and F. to be paid by the railway company, except such as were occasioned by litigation between adverse claimants, and the minutes were settled with this direction as to costs: An application was refused to strike out F.'s name, and the amount of costs he should be allowed left to the Taxing Master.

On the hearing of a petition for the investment of the proceeds of certain lands taken by the above railway company, and which were devised by the late John Forbes to the infant petitioners, the present Sir Charles Forbes appeared and claimed adversely. An order was made for an investment and in favour of the infants, with costs of the petitioners and of Sir C. Forbes to be paid by the company, except such as were occasioned by litigation between adverse claimants.

Chapman, for the railway company, now applied with reference to the minutes of the order, and contended that as the claim of Sir C. Forbes had been disallowed his name should not appear in the order.

Wigram, contra.

The Vice-Chancellor said, that as the minutes had been settled, it must be left to the Taxing Master to say what costs Sir C. Forbes should be allowed.

Tottenham v. Emmett. April 29, 1854.

DISMISSING BILL WITH COSTS ON DEFENDANT'S SETTING DOWN FOR HEARING.—RIGHT OF CO-DEFENDANT TO SIMILAR DECREE.

One of the defendants set down the cause for

hearing and obtained a decree dismissing the bill with costs as against him upon the plaintiff not appearing: A similar decree was made on the application of a co-defendant, although he had not been served with a subpoena to hear judgment.

It appeared that this bill had been set down by one of the defendants for hearing, and that on the plaintiff not appearing, a decree was made dismissing it with costs as against him.

Makins and H. Wright also appeared on behalf of a co-defendant, but who had not been served with a subpoena to hear judgment, and made a similar application.

The Vice-Chancellor said, that the defendant was entitled to a similar decree to dismiss the bill with costs.

Vice-Chancellor Stans.

Thornton v. Thornton. April 24, 1854.

CHARITABLE BEQUEST OF MONEYS SECURED BY MORTGAGE OF RATES.—MORTMAIN ACT.

Held, that sums of money secured by an assignment by way of mortgage of the Birmingham Town Hall rates under the hands and seals of the Commissioners, were within the 9 Geo. 2, c. 36, s. 3, as securities affecting land, inasmuch as the power of collecting the rates vested in the Commissioners passed to the mortgagee; and a bequest of such moneys was therefore held void.

THE testatrix, by her will, after giving various charitable pecuniary legacies, gave the residue of her estate to the treasurer for the time being of the British and Foreign Bible Society. It appeared that part of her estate consisted of two sums of 1,000*l.* each, secured by an assignment by way of mortgage of the Birmingham Town Hall rates, under the hands and seals of the Commissioners, under the 9 Geo. 4, c. liv., s. 95. A question now arose, on exception to the Master's report, whether these securities were not within the 9 Geo. 2, c. 36, s. 3, and the bequest therefore void.

W. M. James and Baggallay for the treasurer of the society, in support of the exceptions; Rolt and Cole for the next of kin, contra, were not called on; C. M. Roupell for the trustees.

The Vice-Chancellor said, that according to *Finch v. Squire*, 10 Ves. 41, money secured by assignment of poor and county rates was within the Mortmain Act and could not pass to a charity, and there was no essential difference between that and the present case. As to the point that the assignment was only of the rates when actually collected, it appeared that the Commissioners had clear power under the Act to collect the rates, and such power passed to the mortgagee, who had therefore an interest affecting land. The exception would accordingly be overruled.

Walcot v. Botfield. March 17; April 24, 1854.

WILL.—CONSTRUCTION.—CONDITION ATTACHED OF RESIDENCE ON ESTATE DEVISED.

A testator directed the person who should for the time being come into possession of his mansion-house, to reside therein for the period of six months in each year, computing from January 1 in one year to January 1 in the next year, with a forfeiture of certain sums in default: Held, that the word "residence" implied a personal presence, that a residence of six lunar months or 168 days was a compliance with the direction, that the residence need not be consecutive, and that presence for any part of a day was residence for the day.

THE testator, William Botfield, by his will, dated in Nov. 1849, directed that his nephew, Beriah Botfield (who was tenant for life), or his sons or daughters or any person taking in remainder after him, who should for the time being come into the possession and beneficial enjoyment of his mansion-house of Decker Hall, in the county of Salop, should reside therein for the period of six months in each year, computing from January 1 in one year to January 1 in the next year, or that in default thereof should forfeit and pay for the first year of such non-residence 1,000*l.*, for the second year the like sum, for the third year 2,000*l.*, and for the fourth year 3,000*l.*, to be applied by the trustees at their discretion in building, draining, or other permanent improvements on the estate; and it was provided, that in the event of the party being a Member of Parliament, the residence for three months including an occasional residence there during the sitting of Parliament, and the keeping up of a suitable establishment, should be equivalent to the six months' residence. It appeared that the testator's nephew had kept up an establishment of servants between 1st January 1852, and 1st January 1853, but had not resided there six months in the whole, although, frequently visiting and sleeping there. This bill was filed by the trustees of the will to take the opinion of the Court as to its construction.

The Vice-Chancellor, after quoting the above clause in the will, imposing the forfeiture on non-residence said, that by the use of the word "residence" the will implied a personal presence, and such was the sense it had in the Statutes having reference to the clergy, which had a considerable bearing on the question. The fact of its being inconvenient for the party, who had property at a distance to superintend, to have residences in the two places, could not be allowed to do away with the express words of the will. Six lunar months' residence, however, that is, 168 days in the aggregate, would be a compliance with the direction, and it was not necessary that the residence should be consecutive, and presence for any part of a day must be considered as residence for the day. There would be a de-

claration accordingly, and for the trustees to retain out of the rents and profits 1,000*l.*, to be applied at their discretion in building, draining, or other permanent improvements on the estate.

Harvey v. Harvey. March 21; April 24, 1854.

EXECUTOR.—ADVANCE BY TO DISCHARGE INCUMBRANCE ON ESTATE.—DEPOSIT OF DEEDS.—STATUTE OF LIMITATIONS.

A testator died in 1816, devising a farm to the defendant mortgaged for 700*l.*, and he directed the residue of his property in money and debts due to be applied in payment of the expenses of the purchase (one instalment of the purchase-money only having been paid at the testator's death) and of the mortgage. The plaintiff, as acting executor, accordingly applied the funds to such discharge, but had himself advanced a sum of 425*l.* which was required to make up the amount due. The conveyance was to the defendant, with remainder in fee tail to the plaintiff, but the title-deeds were handed to the plaintiff without, however, any memorandum of deposit. There was no payment of interest within 20 years: Held, that although the advance constituted a charge, the claim was barred by the Statute of Limitations.

THE testator having purchased a farm in Essex for a sum payable by instalments, and of which the first instalment of 100*l.* had been paid, died in February, 1816, and by his will, after devising *inter alia* a farm to his son, Robert Harvey (the plaintiff), he gave the farm in Essex to his son, Edward Harvey (the defendant), "mortgaged for 700*l.*," with benefit of survivorship as to both; and he directed the residue of his property in money and debts due to him to be applied in payment of the expenses of the purchase and the mortgage of such farm. It appeared that a sum of 1,625*l.* was due of the purchase-money, and the plaintiff, who was acting executor, had applied the funds in hand in discharge thereof, and had paid the remainder, amounting to 425*l.* himself. The conveyance was taken to the defendant, with remainder in fee tail to the plaintiff, and the title-deeds were handed to the plaintiff, as was alleged, to secure the advance, but there was no memorandum of deposit. No interest had been paid, nor was there any receipt given to the plaintiff for the sum he advanced.

Chandler and Howe for the plaintiff; *Rolt and Selwyn* for the defendant.

The Vice-Chancellor held, that the advance constituted a charge; and on the question, whether the claim was not barred by the Statute—there having been no acknowledgment by payment of interest or receipts—(after taking time to consider) said, that as the plaintiff had been unable to make out payment of interest within 20 years, the claim was barred by the Statute.

In re Morgan's Trust. April 22, 29, 1854.

WILL.—CONSTRUCTION.—REFERENCE AS TO NEXT OF KIN.

The testator gave personal estate in trust for his daughter for life for her sole and separate use, and directed, in the event of her dying without issue, his trustees to pay, assign, and transfer the same unto the executors or administrators, or other legal representatives of his daughter, of her own proper blood and kindred: Held, that her next of kin, and not the executors appointed by the daughter, who died without having married, were entitled, and a reference was directed to ascertain the same.

THE testator, by his will dated in January, 1825, gave certain personal estate in trust for his daughter for life, for her sole and separate use, and in the event of her dying without issue, he directed his trustees to pay, assign, and transfer the same unto the executors or administrators, or other legal representatives of his daughter of her own proper blood and kindred. It appeared that the daughter, on her death without having married, had appointed by her will, dated in August, 1849, her brother and another person as her executors, whereupon her next of kin claimed to be entitled, and filed this petition as to the construction of the will.

J. V. Prior in support; *W. Hislop Clarke and Roche* for parties in the same interest; *Hallett* for executors, *contra.* *Curr. ad. vult.*

The Vice-Chancellor said, that the will must be taken to exclude any interest in the husband if the daughter had married, and to provide for its going to her own relatives. There would therefore be a declaration that her next of kin were entitled, and an inquiry be directed to ascertain the same.

In re Ward's Estate. April 29, 1854.

LUNATIC.—PAYMENT OUT OF FUND IN COURT TO PARISH OFFICERS OF EXPENSES OF MAINTENANCE.

An order was made on the petition of the parish officers for the sale of a sufficient part of a sum of stock in Court, to which the lunatic was entitled, to meet the expenses of his maintenance and support by the parish, together with the costs.

IT appeared that Robert Prosser, a lunatic, had been maintained by the parish of St. Marylebone at the Peckham House Asylum and Colney Hatch, and that he was entitled to a third share in a sum of stock paid into Court and standing to the credit of this cause. This petition was therefore presented for the sale and payment to the parish officers of so much of the stock as would raise the sum so expended, together with the costs.

R. Moore in support, referred to the 7 & 8 Vict. c. 101, s. 27, and 12 & 13 Vict. c. 103, s. 16, and *In re Upfull's Trust*, 3 M.N. & G. 281.

The Vice-Chancellor made the order accordingly.

Court of Queen's Bench.

Harris v. Carter. April 24, 1854.

ACTION BY SEAMAN AGAINST OWNERS FOR INCREASED WAGES.—CONSIDERATION FOR FRESH ARTICLES.

A seaman had shipped himself on board the defendants' vessel to Melbourne and India and back, at the rate of 3l. per month, but on the desertion of some of the crew at Melbourne, the captain had entered into fresh articles with such as should remain at 6l. per month. In an action to recover the 3l. increased wages, held, that as the plaintiff had not been released from the obligation of the former articles, there was no consideration for the fresh articles, and the owners were not bound.

THIS was an action by a seaman to recover from shipowners the amount of wages due to him, and on the trial before Platt, B., at the last Liverpool assizes, it appeared that the plaintiff had shipped himself in the defendants' vessel to Melbourne and India and back, at the rate of 3l. per month, but that on the desertion of some of the crew at Melbourne, the captain had entered into fresh articles with such as should choose to remain at 6l. a month. The defendants had paid the wages at the rate of 3l. per month into Court, and denied their liability to the additional amount. By the 13 & 14 Vict. c. 93, s. 46, it is enacted, that "every master of a ship shall, on carrying any seaman to sea as one of his crew, enter into an agreement with him in the manner hereinafter mentioned; and every such agreement shall be in a form to be sanctioned and issued by the Board of Trade, and shall be dated at the time of the first signature thereof, and shall be signed by the Master before any seaman signs the same," &c.

A nonsuit having been directed, subject to leave reserved to set it aside and enter a verdict for the plaintiff,

Milward accordingly now moved, citing *Stilk v. Myrick*, 2 Camp. 317, and contended it did not apply.

The Court said, that as the plaintiff had not been released from the obligation of the articles he had signed, the master had no authority to bind the owners by a fresh agreement, for which there was no consideration, and the rule must be refused.

Regina (Ex parte Gover) v. Justices of Southampton. April 28, 1854.

STATUTE OF BRIDGES.—ALLOWANCE TO COUNTY SURVEYOR BY JUSTICES.—MANDAMUS.

The magistrates had made an order for the allowance of 100l. to the county surveyor, appointed under the 22 Hen. 8, c. 5, for extra services. On a motion for a rule nisi for a mandamus on them to make an order for the payment of the amount he claimed,

held, that as the justices had exercised their discretion under sect. 8, the rule must be refused.

THIS was a motion for a rule nisi for a mandamus on the justices of the county of Southampton, to make an order for the payment by the county treasurer of the account of their surveyor, for extra services. It appeared that an annual salary of 25l. was paid, but that certain allowances were made for extra services.

By the Statute of Bridges (22 Hen. 8, c. 5), sect. 8, it is enacted, that "the justices of the peace, or four of them, shall have full power and authority to allow such reasonable costs and charges to the said surveyors and collectors, as by their discretion shall be thought convenient."

Maynard in support.

The Court said, the surveyor was to be recompensed in the "discretion" of the magistrates, who had not refused to exercise it, but had offered 100l. as the sum which he was entitled to receive. The rule was therefore refused.

Regina v. Williams. April 29, 1854.

POOR-RATE.—LIABILITY OF TENANT FROM YEAR TO YEAR IN RESPECT OF RIGHT OF KILLING GAME.

Held, confirming the order of sessions on a special case, that the yearly tenant of a farm, who also rents the right of taking and killing game and rabbits thereon, is liable to be rated to the poor in respect of such privilege as well as of his occupation of the land.

FROM this special case for the opinion of the Court from the sessions, it appeared that Mr. Williams was yearly tenant of the Hambleton farm, in the township of Boltby, Yorkshire West Riding, and also of 700 acres of land, part of which consisted of moors, and that he was rated to the poor-rate in respect thereof and also of the right of taking and killing game and rabbits on the whole land, which privilege he had rented of his landlord six months after the commencement of his tenancy.

Hall in support of the rate; *Welsby* and *Price* contra, on the ground the privilege was unconnected with the occupation and was personal.

The Court said, that if the privilege had been originally let with the land, it would hardly be disputed he would be liable to be assessed in respect thereof, and under the circumstances the party was in the same situation. The order of sessions would therefore be affirmed.

Regina v. Justices of East Stonehouse. April 29, 1854.

REMOVAL OF PAUPER.—WIFE AND CHILDREN OF MARINE.

The wife and five children of a person who

had entered in the marines many years since, had resided in a parish for upwards of five years: Held, that they were irremovable, and an order of sessions quashing such order of removal was on special cause affirmed.

THIS was a special case from the quarter sessions, quashing on appeal an order for the removal of the wife and five children of George Wawn, who had enlisted in the marines in 1834. It appeared that the parties were married at East Stonehouse, and lived there as long as her husband was quartered in the place. It was admitted the paupers had resided in the parish for five years.

Rowe in support of the order of sessions, referred to the 11 & 12 Vict. c. 111; *Karslake*, contra.

The Court said, that as it could not be said the husband was removable his wife and children were irremovable, and the order of sessions quashing the order of removal was therefore affirmed.

Regina (ex parte London Police Commissioners) v. Wyng. April 29, 1854.

METROPOLITAN POLICE ACT.—OBSTRUCTING THOROUGHFARE.—CONVICTION.

Quære, whether a conviction under the 2 & 3 Vict. c. 47, s. 54, for wilfully obstructing a thoroughfare is supported by evidence, that the defendant waited with his employers' cart for an hour while another cart was unloading at their warehouse. But the Court refused to decide the question on a special case, without a regular information and conviction.

It appeared that the defendant, who was the servant of Messrs. Travers, wholesale grocers in St. Swithin's Lane, had been convicted under the 2 & 3 Vict. c. 47, s. 54, for wilfully obstructing a thoroughfare. It appeared that he had waited an hour while another cart was unloading at his employers' warehouse. The defendant had been summoned and convicted, subject to a special case to this Court.

Wilde in support of the conviction; *Ballantine* for the defendant.

The Court said, that in order to obtain the opinion of this Court there must be a regular information and conviction, and refused accordingly to entertain the question.

¹ Which enacts that "every person shall be liable to a penalty not more than 40s., who within the limits of the metropolitan police district shall in any thoroughfare or public place" "cause any cart," &c., "to stand longer than may be necessary for loading or unloading," "or who by means of any cart," &c., "shall wilfully interrupt any public crossing, or wilfully cause any obstruction in any thoroughfare."

Ex parte Wright, in re ——. April 29, 1854.

APPLICATION ON ATTORNEY TO ACCOUNT AND PAY OVER BALANCE.—FRAUDULENT CONSPIRACY.

A., having been appointed to collect rents for different persons, arranged with an attorney to introduce business to him, and that the attorney should pay over such sums as he might recover, deducting certain fixed charges for what he should do, and that he should make certain charges on the debtor in case the claim were not settled, and pay over a certain portion to A.: Held, that the facts disclosed a fraudulent conspiracy, and a rule was refused on the application of A. on the attorney to account and pay over the balance.

THIS was a motion for a rule nisi on an attorney to account for certain sums received on the account of the applicant, who had been appointed to collect rents for different persons, and had arranged with the above attorney to introduce business to him, and that the attorney should pay over such sums as he might recover, deducting certain fixed charges for what he should do. It was also arranged that the attorney should make certain charges on the debtor in case the claim was not settled, and pay over a certain portion to the present applicant. The application asked also for payment over of the balance after the deduction of certain costs.

Quaere in support.

The Court said, that the facts disclosed a fraudulent conspiracy on the part of the applicant and the attorney, and the rule was accordingly refused. The affidavits to be handed in and filed, in order to determine what ulterior steps should be taken.

Court of Common Pleas.

Wilson v. Wilson. April 28, 1854.

ACTION TO RECOVER PENALTY ON CONTRACT TO PURCHASE LEASEHOLD HOUSE.—BREACH OF COVENANT TO INSURE.

The defendant agreed to purchase the lease of a house for 1,150*l.*, of which 50*l.* was to be paid down, and that if either party broke the bargain, a sum of 100*l.* should be forfeited and paid as a debt, and to be so recoverable. The defendant paid 5*l.* down and gave an I O U for the remaining 45*l.*, but refused to complete on its appearing that the plaintiff had committed a breach of the covenant to insure in the lease by not renewing the policy until after its expiration: Held, that the plaintiff could not recover on the I O U nor the 100*l.* penalty, as there was no consideration in consequence of the breach of covenant.

THIS was a rule nisi obtained by *Byles, S. L.*, on April 19 last, to set aside a nonsuit and enter the verdict for the plaintiff for 45*l.* in this action. It appeared on the trial before *Talfourd, J.*, at the last sittings at Westminster, that the defendant had agreed to purchase the lease of a public house for 1,150*l.*, of which

50*l.* was to be paid down, and that if either party broke the bargain a sum of 100*l.* should be forfeited and paid as a debt, and to be so recoverable. The defendant had paid 5*l.* down, and given an I O U for the remaining 45*l.*, and on his refusing to complete, the plaintiff had sold the premises for 900*l.*, and had brought this action to recover the deficiency and the 100*l.* penalty,—the I O U not having been paid. The defendant set up as a defence that the plaintiff had committed a breach of the covenant in the lease to insure, by not renewing the policy until after the expiration of the 15 days allowed by the insurance office, whereupon the plaintiff was nonsuited, (see *Doe dem. Pitt v. Shewin*, 3 Campb. 134.)

Knowles and Barstow showed cause against the rule, which was supported by *Raymond*.

The Court said, that payment of the insurance after the day did not cure the defect by reason of his not having kept up the policy, and that the plaintiff could not make a good title against the landlord, who might bring an action of ejectment and turn the plaintiff out. There had been no consideration for the I O U, which had been given instead of so much cash, and the rule would be discharged.

Schepeler v. Durant. April 29, 1854.

PLEA OF ALIEN ENEMY TO ACTION BY RUSSIAN SUBJECT BEFORE DECLARATION OF WAR.

A rule nisi was refused for leave to the defendant in an action, brought by a Russian subject before the declaration of war, to plead in abatement alien enemy where he was under terms to plead issuably.

THIS was an application for a rule nisi on appeal from *Maule, J.*, for leave to add a plea in abatement of alien enemy in this action which was brought by a Russian subject to recover damages for the non-acceptance of a quantity of timber from Riga, and to which the defendant was under terms to plead issuably, before the recent declaration of war against Russia.

T. J. Clark in support.

The Court said, that the defendant had agreed to plead issuably, and therefore not to plead the plea in question. The application would therefore be refused.

Crown Cases Reserved.

Regina v. Featherstone. April 29, 1854.

SIGNATURE OF CASE RESERVED ON DEATH OF JUDGE.—PRACTICE.

On the death of a Judge who tried a prisoner, held that the case which had been reserved should be signed by the other Judge on the circuit.

Huddleston applied for the direction of the Court in reference to this case, which had been reserved by the late Mr. Justice *Talfourd*, but who had died before signing the same.

The Court said, that all cases at the assizes were stated to be tried before the two Judges,

and that therefore the signing of Mr. Justice *Wightman*, who was on the circuit with the late Judge, would be sufficient.

Regina v. Carlisle and another. April 29, 1854.

INDICTMENT.—FALSE REPRESENTATIONS.

*S. had sold a horse to the prisoner B. for 39*l.*, but had been induced by him and the other prisoner C. to take a less sum by falsely representing the horse to be unsound, and that B. had consequently sold it for 27*l.*: A conviction for each offence was affirmed.*

IT appeared from this indictment that a Mr. Simpson had sold a horse to the prisoner Brown for 39*l.*, but that he and the other prisoner Carlisle had induced Mr. Simpson to take a less sum by falsely representing the horse to be unsound, and that Brown had in consequence sold it for 27*l.* The prisoners were convicted.

Whigham now contended the indictment did not disclose any offence.

The Court, however, held, that the conviction must be affirmed.

Regina v. Harris. April 29, 1854.

INDICTMENT FOR EMBEZZLEMENT.—MONEY NOT RECEIVED AS SERVANT OF PROSECUTOR.

A prisoner was appointed by the magistrates miller in the county gaol, and was paid weekly out of the county rates. It was his duty to take tickets from persons bringing grain to be ground, and to receive money for the same. It appeared he had ground grain without a ticket, and had not accounted for the money received. On an indictment against him as servant of the inhabitants, or of the clerk of the peace, for the embezzlement of their money: Held, that the conviction could not be supported.

THIS was an indictment against the defendant as servant of the inhabitants of the county of Worcester, or of the clerk of the peace, for the embezzlement of their money. It appeared that the prisoner was appointed by the magistrates miller in the county gaol, and was paid weekly out of the county rates, and that it was his duty to take tickets from persons bringing grain to be ground and to receive money for the same, and that he had not accounted for moneys received for grinding grain taken in without a ticket.

Selge in support of the conviction.

The Court said, that the prisoner had taken in grain without a ticket, showing his intention to make an improper use, and for his own benefit, of the machine intrusted to him. He had, however, no right on behalf of his master to grind any corn except such as was brought to him with a ticket, and the money was not therefore received on his master's account, and the conviction for embezzlement must be quashed.

The Legal Observer,

AND

SOLICITORS' JOURNAL.

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SATURDAY, MAY 13, 1854.  
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JOINT-STOCK COMPANY MANIA.

"EXECUTOR AND TRUSTEE SOCIETY."

ABOUT thirty years ago there was an unexampled rage for joint-stock companies of all kinds. The newspapers abounded with advertisements of the most extraordinary projects, from the most magnificent and impracticable to the most absurd and insignificant. Many men of high rank, bankers, merchants, and others whose names were familiar to the public and particularly in the City, were solicited to become directors, and scores of schemes found their way on the Stock Exchange as soon as the shares were allotted and the first small deposit paid. After a brief trial amongst speculating shareholders; but few came into actual operation and still fewer survived to any useful purpose. Several of those projects originated with ingenious men who obtained the assistance of active solicitors, and were sometimes well paid, but generally the projectors suffered with the failure of the scheme.

Several years afterwards the railway mania made its appearance. Competing projects of all kinds were brought forward, and rapid fortunes were made and lost in the course of a few years. It may be said, however, for railway enterprises, that they are peculiarly within the scope and province of joint-stock companies. They require the union of many persons interested in the several lines proposed to be constructed. In order to carry such plans into effect, a large capital is required, not only for the first outlay but for the satisfactory continuance of the undertaking, and in such cases a joint-stock company is the legitimate and only practicable mode of accomplishing the object. But as many public enterprises are better in the hands of an independent company

than of Government, so it is manifest that the ordinary affairs and business of society are more efficiently and economically conducted by individuals than by large companies. No one doubts that where the State does not undertake the duty of constructing docks, canals, roads, and bridges, the work must devolve on wealthy corporations or joint-stock companies. Offices for the insurance of lives, houses, and shipping, also peculiarly belong to a numerous body of proprietors.

When, however, a moderate capital only is required, and where the principal thing to ensure success is personal skill, integrity, experience, and activity, then the business is best conducted by individuals who are responsible for, and whose interests are connected with, the prosperous result of the speculation.

These remarks apply to many of the recent joint-stock companies, to some of the banking companies, peculiarly constituted insurance companies, such as the insurance of doubtful or defective titles, and similar projects; but we would peculiarly address ourselves to the two schemes for administering private trusts, now before Parliament, and which, if they pass in any shape, will doubtless be followed by a shoal of others.

Considered, indeed, with reference to *economy*, how can it be reasonably expected that business can be managed by a public company with the same advantage as by one or a few individuals?

1. There must be a capital invested, for which interest must be paid. 2. The chairman, deputy chairman, and directors must receive their fees for attendance. 3. The secretary, or actuary, and clerks, must be paid their salaries, and servants must be paid their wages. 4. The rent of offices,

rates, taxes, and expenses must not be omitted in the computation. 5. The concern must be publicly announced, advertisements must appear frequently in the newspapers, and prospectuses circulated throughout the country. Without extensive "puffing," the merits of the scheme will not be known or appreciated. 6. Then come losses and responsibilities, for perfection cannot be expected either from directors or officers.

These unavoidable expenses of a joint-stock establishment are to be paid out of the profits;—to which must be added law expenses, the commission of surveyors, perhaps of engineers, and various agents. The solicitors' costs and other charges may, indeed, be debited against the trust property; but all the other expenses must come out of the per centage paid by the persons interested in the trust property. But there will be *extra* costs, which the company must pay, and especially when they happen to have made a mistake.

Then, lastly, comes the important disbursement of the *dividend* to be paid the shareholders or proprietors of the company. After deducting all the costs, charges, and expenses, fees, salaries, wages, rent, taxes, &c., what per centage can possibly be paid?

The *Law Review* of this month contains an ably written and somewhat plausible argument in favour of the Executor and Trustee Society. The writer assumes the want of such a company.¹ He does not attempt to prove that there is any great evil which the company can remove. He notices, indeed, the occasional expense of appointing new trustees, and asserts that some trustees are negligent or incompetent, but the remedy for which is obviously in the power of the parties interested to supply by appointing others, and the expense of which (if not now small enough) may be reduced, without resorting to a joint-stock company to be paid for all their services. It is a mere unfounded conjecture that per-

sons of property cannot find private friends to undertake the duty of trustee. The writer contends that all trustees should be paid. If so, there can surely be no difficulty in finding able men of business,—bankers and solicitors,—who will undertake the duty, a large proportion of whom now do so gratuitously. We say, therefore, that the preamble of the Bill is not proved. There is no need to confer unusual powers on these associations. The occasional dereliction of duty of existing trustees forms no ground for altering the general law. We are aware it has been said, that where a trust is designed to continue for an unlimited period of time, as in the case of charitable and educational institutions, it is better to select a corporate body as trustees. This may be so, and the object can now be effected without creating a new company to be paid for their services. Numerous collegiate and other societies and institutions exist, acting as trustees, to whom bequests may safely be intrusted, the more especially since the establishment of the Charitable Trust Commission. It is remarkable, indeed, that in the article to which we refer, it is admitted that the vesting of property in the proposed new corporation would be objectionable, if it were perpetual; but it is contended that the investment will only be temporary. This candid acknowledgment gives up, in effect, the advantage of the perpetual succession of a corporate body and neutralizes the objection to the occasional expense of appointing new trustees, during the comparatively short period of the trust.

To the objection that a public board is not adapted to the consideration of the family affairs and necessities involved in the trust, the reviewer urges as a merit, that the directors will be fitter trustees than the private friends of the parties, because they will not be influenced by any feeling of generosity to deviate from the strict rule of the trust. We may admit that on some occasions this will be an advantage, and we are not inclined to advocate the relaxation of the strict duties of a trustee; but we can readily conceive that a body of men, strangers to the family, with whose interests they are intrusted, may unnecessarily disregard the feelings and oppose the wishes of the parties, although a concession would involve no serious risk.

It is said, with some feeling of exultation, that the House of Commons decided in favour of the South Sea Bill, notwithstanding the opposition raised by the Profession,

¹ We marvel that the projectors did not get some Ralph Nickleby to convene a meeting and pass some such resolution as the following, which we have taken the liberty to alter from the "United Metropolitan Improved Muffin and Punctual Delivery Company:"—

"That this meeting views with alarm and apprehension, the existing state of trusteeship, as at present constituted, wholly undeserving the confidence of the public, and that it deems the whole system alike prejudicial to the interests and morals of the people, and subversive of the best interests of a great commercial and mercantile community."

and it is anticipated that the opposition will equally fail in the House of Lords. We are aware that the opposition of lawyers is not much regarded, and we are not prepared to explain how it was that the resistance was so unsuccessful, except that by grafting upon a private Bill these important alterations in the general law, the promoters of the measure dexterously prevented that discussion which a public Bill would have undergone. The mode of proceeding at the time of private business, that is from four to five o'clock, is well described in Dickens's "Household Words."

"A good many members are collected, talking and laughing in unproved disorder: no attention whatever is paid to what is going on; not a syllable can be, or is meant to be, heard, except the following formula repeated over and over again. The Speaker standing up, calls 'Mr. Brotherton!' Mr. Brotherton answers, 'Bill, sir.' The Speaker: 'Please to bring it up.' Whereupon Mr. Brotherton trots up to the table and hands a paper to the clerk, who reads the title of the Bill. 'Universal Locomotion Company.' The Speaker then takes the paper and says, 'Universal Locomotion Company:' that this Bill be now read a first time; as many as are of this opinion say Aye, as many as are of the contrary opinion say No: 'the Ayes have it.' Whereupon the Bill is handed back to the clerk, who reads again, 'Universal Locomotion Company,' [or 'South Sea Fishery Trust Bill,'] which is supposed to be the reading of the Bill. The Speaker again calls upon Mr. 'Brotherton!' and the whole process is repeated. All this goes on in the most rapid monotonous sing-song, varied only by the loud key in which, upon each occasion the title of the Bill and the name of the mover are pronounced; rendered tolerable by the musical tones of the Speaker's voice."

In addition to these difficulties of discussing a private Bill, it happened that on reading the South Sea Trust Bill, the House was on the tip-toe of expectation for a message from the Crown, declaring war with Russia.

It is supposed that the objections stated by the opposers of these Trust Bills, which were partly expressed by Mr. Malins, Mr. Spencer Follett, and Mr. Mullings, originated in the anticipated injury which would be inflicted on the Profession, by the transfer of legal business connected with trusts from the counsel and solicitors now engaged in it, to the counsel and solicitors of these companies. The learned writer in the *Law Review* consoles "the solicitors of England" by stating that—

"The Bill does not propose to vest in the company the power authoritatively to decide

on the validity of testamentary papers, on the construction of wills, on the proof of the claims of persons who seek to be treated as persons interested in their administration, nor on the relative rights of creditors and legatees. All these, and many other subjects of the same kind, must remain as at present subject to contentious litigation in our various Courts."

It was certainly not imputed to the projectors of these wholesale Trust Societies, that they sought a monopoly of the whole law business on both sides of every question, representing alike plaintiffs and defendants, and pocketing the costs of all parties. The objections raised are directed against the measure,—1st. Because it alters the general law by the side-wind of a private Bill, evading the proper discussion of its scope. 2nd. Because it limits the liability of the Trust Company. 3rd. Because it indemnifies trustees for a breach of trust, and exacts a profit not allowed by the terms of the will or settlement.

It is unnecessary, however to repudiate the right which the solicitors in general possess, to protect their own just interests; and if they are convinced, as we believe they sincerely are, that these Bills, whilst they are injurious rather than beneficial to their clients, will be prejudicial to themselves, why should they not, like all other classes of the community, resist such novel expedients, designed for the advantage of a few to the injury of many? The *Law Review* admits that—

"If the company proposed to engross all the law business which must necessarily be performed, and to monopolise it for the benefit of certain solicitors appointed by itself, there would be some ground of complaint. But this is exactly what the company expressly declares it does not intend to do. Where the testator, or settlor, or the parties interested, shall desire any particular solicitors to perform the law business, they will be employed in preference to any one else."

We can find no such provision in the Bill, but presume there is some attractive prospectus, in which these liberal provisions are contained. It is also intimated, that if their own solicitors should be already encumbered with demands on their time, "such solicitors among the *shareholders* will be selected as have the fairest reputations in the Profession for skill, ability, and integrity." This is ingeniously devised, and we leave our readers to estimate the boon at so much as it is worth. In order to participate in the overflow of business from the office of the company's solicitors, they must become shareholders!

CRIMINAL PROCEDURE BILL.

A BILL has just been brought in by Mr. Aglionby to "Alter the Time and Mode of taking the Pleas of Persons charged with Larceny, and for the Improvement of Criminal Procedure in cases of Larceny." It recites that the time and mode of taking the pleas of persons charged with larceny should be altered, whereby much expense to the public, and the time of grand jurors, prosecutors, and witnesses, would be saved, and in many cases unnecessarily long imprisonment be spared to persons so charged. The following are the proposed enactments:

When any person shall be arrested on any charge of larceny or suspicion thereof, such charge shall be made in open Court, either before one stipendiary police magistrate, or in open sessions, or in special sessions, and such stipendiary police magistrate or justice or justices shall cause the charge to be taken in writing, and entered in a book to be kept for that purpose by the clerk to such stipendiary police magistrate or justices in petty sessions, in the form set out in the Bill; s. 1.

Taking plea.—After any person so charged as aforesaid shall have heard the charge read to him, and also the depositions of the witnesses to the facts and circumstances of the case, and the stipendiary police magistrate or justice or justices shall think the evidence given before him or them to be such as to raise a strong presumption of guilt, such stipendiary police magistrate, in open Court, or two justices at the least in open petty sessions, shall call upon the person charged to plead to such charge, and shall at the same time caution him as to the nature and effect of his plea, which caution shall be in these words, or words to the like effect:

"You have heard the charge against you, and the depositions of the witnesses; you are now called upon to plead to such charge; you are not bound to say anything beyond your plea, unless you desire to do so, but what you do say will be taken down in writing, and may be produced on your trial: If you plead 'Guilty,' you must not do so under any expectation of favour for so doing, but your plea will be taken, and a conviction filed against you, which will have the same effect as if you were convicted by a jury."

And thereupon the said stipendiary police magistrate or justices shall and they are hereby authorised to receive and take the plea of the person so charged as aforesaid, which they shall enter or cause to be entered at the foot of the charge so to be entered in the book of charges hereby required to be kept as aforesaid; s. 2.

In all cases where the person charged as aforesaid shall plead "Not Guilty," or shall refuse to plead, the depositions of the witnesses

shall be taken and proceedings had as heretofore before one stipendiary police magistrate or one or more justices of the peace; s. 3.

Pleas of "Guilty" to be returned to assize or quarter sessions; s. 4.

Clerks of assize and clerks of the peace to file pleas, &c.; s. 5.

As to trying cases.—In all cases of pleas of "Guilty" to charges unattended with circumstances of aggravation; that is to say, where it shall not be proved that the person so pleading "Guilty" had been previously convicted of felony, or he shall not admit himself to have been so convicted, or in cases of larceny of money or chattels where the amount or value of the money or chattels stolen shall not be proved to be of the value of 5*l.* or upwards, or where the larceny shall not be proved to have been from the person, or attended with the breaking of any lock or fastening, or from a dwelling-house or curtilage, or by a servant, it shall be lawful for such stipendiary police magistrate, or such justices in petty sessions as aforesaid, before whom any such plea of guilty shall be taken, and they are hereby authorised and required, in open Court, to pass sentence upon the person so pleading "Guilty" as aforesaid: Provided always, that such sentence shall in no case exceed the term of two calendar months' imprisonment, and may be with or without hard labour as to the said stipendiary police magistrate or justices shall seem meet; s. 6.

Returns to be made to Secretary of State; s. 7.

Costs.—With regard to the payment of the costs and expenses of prosecutions for larceny, in those cases where the party charged shall plead "Guilty," and such stipendiary police magistrate or justices shall return the pleas to the assize or quarter session, or shall pass sentence as hereinbefore is directed, such stipendiary police magistrate or justices are hereby authorised and empowered, at the request of the prosecutor, or of any other person who shall appear on summons to prosecute or give evidence against any person so charged with larceny, to order payment unto the prosecutor and witnesses of such sums of money as to the Court shall seem reasonable and sufficient to reimburse such prosecutor and witnesses for the expenses they shall have severally incurred in apprehending the person charged, in attending before the examining magistrate or justices, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein, and also a sum not exceeding 10*s.* to be paid to the clerk of assize or clerk of the peace on filing each plea of "Guilty" as shall be returned to him for that purpose, and for recording a conviction thereon, in lieu of all former fees which would have been received by the clerk of assize or clerk of the peace in such cases; and all such costs and expenses shall be paid by the treasurer of the county, riding, division, liberty, city, borough, or place, upon the order in writing of such stipendiary police magistrate or justices as aforesaid.

said, out of the funds from which the costs of criminal prosecutions are now defrayed; s. 8.

Clerks to justices.—No clerk to the justices in petty sessions shall, either by himself, or by his partner, clerk, or agent be engaged in the prosecution or defence of any criminal case at any assize or quarter sessions where such case shall have been sent from the petty sessional division for which such clerk shall act; s. 9.

WITNESSES' BILL.

GREAT inconvenience arises in the administration of justice from the want of a power in the Superior Courts of Law to compel the attendance of witnesses resident in one part of the United Kingdom at a trial in another part, and the examination of such witnesses by Commissioners is not in all cases a sufficient remedy for such inconvenience: It is therefore proposed to enact as follows:

1. If, in any action or suit now or at any time hereafter depending in any of her Majesty's Superior Courts of Common Law at Westminster or Dublin, or the Court of Session or Exchequer in Scotland, it shall appear to the Court in which such action is pending, or, if such Court is not sitting, to any Judge of any of the said Courts respectively, that it is proper to compel the personal attendance at any time of any witness who may not be within the jurisdiction of the Court in which such action is pending, it shall be lawful for such Court or Judge, if in his or their discretion it shall so seem fit, to order that a writ called a writ of *subpœna ad testificandum* or of *subpœna duces tecum* or warrant of citation shall issue in special form, commanding such witness to attend such trial wherever he shall be within the United Kingdom, and the service of any such writ or process in any part of the United Kingdom shall be as valid and effectual to all intents and purposes as if the same had been served within the jurisdiction of the Court from which it issues.

2. Every such writ shall have at foot thereof a statement or notice that the same is issued by the special order of the Court or Judge, as the case may be; and no such writ shall issue without such special order.

3. In case any person so served shall not appear according to the exigency of such writ or process, it shall be lawful for the Court out of which the same issued, upon proof made of the service thereof, and of such default to the satisfaction of the said Court, to transmit a certificate of such default under the seal of the same Court, or under the hand of one of the Judges or Justices of the same, to any of her Majesty's Superior Courts of Common Law at Westminster, in case such service was had in England, or in case such service was had in Scotland to the Court of Session or Exchequer

at Edinburgh, or in case such service was had in Ireland to any of her Majesty's Superior Courts of Common Law at Dublin; and the Court to which such certificate is so sent shall and may thereupon proceed against and punish the person so having made default in like manner as they might have done if such person had neglected or refused to appear in obedience to a writ of subpœna or other process issued out of such last-mentioned Court.

4. Nothing herein contained shall alter or affect the power of any of such Courts to issue a commission for the examination of witnesses out of their jurisdiction, in any case in which, notwithstanding this Act, they shall think fit to issue such commission.

5. Nothing herein contained shall alter or affect the admissibility of any evidence at any trial where such evidence is now by law receivable, on the ground of any witness being beyond the jurisdiction of the Court, but the admissibility of all such evidence shall be determined as if this Act had not passed.

THE SITE OF THE NEW COURTS OF LAW.

AN able Letter from Dr. Walter Lewis, the Medical Superintendent of the Medical Board of Health, addressed to the General Board of Health, appeared in the *Morning Chronicle* of the 4th instant, accompanied by a Letter from Professor Owen, relating to the proposed Building of the New Courts on the interior of Lincoln's Inn Fields. From these important documents, we shall submit some extracts to the consideration of our readers. Dr. Lewis thus commences his letter:—

"As a scheme has lately been under public notice for erecting new Law Courts in Lincoln's Inn Fields, I deem it my duty to lay before your honourable Board some account of the sanitary condition of the neighbourhood of that open space, in order that the proposal may not be adopted in ignorance of its probable effects upon the health of a considerable population in the heart of the metropolis. The general sanitary condition of the neighbourhood may be described very briefly. The square in question is situated in one of the most crowded districts in London, consisting in a great measure of courts and alleys, which contain a population many times larger than the laws of health ever permit with impunity. These courts and alleys, also, are narrow, confined, and unventilated, and the houses, consisting generally of six rooms, are utterly destitute of every sanitary requirement. With this preliminary observation, I proceed to lay before you a description of a few of the localities which I recently inspected in company with Mr. Levatt, the district medical officer, Mr. Cadogan and Mr. Howard, the inspectors of

pavements, premising only that the number of inmates of the different houses is, I believe, in most cases understated, as many of the occupiers, particularly the Irish, take in lodgers without the knowledge of their landlords, and cannot be prevailed upon to state truly the extent to which they carry the system of sub-letting."

Dr. Lewis then proceeds to describe the various courts, alleys, and passages in the Liberty of the Rolls, and St. Clement Danes, occupying the east and south sides of Lincoln's Inn, and particularly the site lying between Carey Street and the Strand, on which the New Courts and Offices are proposed by the Incorporated Law Society to be erected. Within this dense region are numerous places of which we never before heard: such as Bowl and Pin Alley, Kingsbury Place, Bonds' Buildings, Swan Court, Lee's Buildings, Bailey's Court, Ship Yard, Yates' Court, Gilbert Street, Plough, Bennett's, and Nagshead Courts, with divers others, of which we have occasionally heard complaints of various kinds.

The statement specifies the length and breadth of these blocks of houses and the number of the inhabitants crowded within them. For instance, ten houses with 106 occupants; six with 96 persons; twenty-three with 342 tenants; and many single small houses filled with upwards of 30 persons.

The Medical Superintendent states, that—"Not one of these places has a sufficient circulation of air. Instead of having the minimum width sanctioned by the laws of health, of thirty or forty feet, they generally vary in breadth from six to twelve feet. Further, many of them are not merely narrow, but they do not possess the advantage of leading into principal streets. They are in many instances but the offshoots, as it were, of other narrow courts, which again are sometimes but intermediately connected, by means of other courts, with open thoroughfares. Under such circumstance, pure air does not easily reach the densely peopled houses, which so much require it; but, beyond question, the supply, defective as it is, is much greater than it would be if the large open space in the neighbourhood where the air now circulates without impediment were covered with buildings. In a sanitary point of view, Lincoln's Inn Fields is a great reservoir, from which the miserable localities I have described derive their stunted supply of atmospheric air, and in my opinion that reservoir cannot be filled up or encroached upon without disastrous consequences to

the health and lives of the surrounding population."

This testimony of Dr. Lewis is supported by the following opinion of Professor Owen, given in a letter addressed to Dr. Lewis:—

"When the proposition to offer the site of Lincoln's Inn Fields to the Government for the purpose of erecting 'Law Courts' in the gardens, was mooted at a meeting of the trustees of the square, I opposed the motion, on the grounds—

"1. That the preservation of so extensive an open space in the centre of London was of much importance to the health, comfort, and convenience of the densely populated neighbourhood of the square, the sanitary ground urged in the Act of Parliament incorporating the trustees for the purpose amongst others of preventing additional buildings in the said 'fields,' being still more urgent now than it was upwards of a century ago.

"2. That chemical science has since shown that a place well planted with trees and shrubs, like the gardens in Lincoln's Inn Fields, is directly operative in the warmer months of the year, when the leaves are out, in absorbing deleterious gases and giving out vitalizing gas (oxygen), and that the wilful destruction of so many well-grown trees would be a barbarous and ignorant direct deterioration of the health-sustaining influences already too sparingly developed in London.

"3. That the giving up of the open planted space in Lincoln's Inn Fields would also indirectly operate in deteriorating the healthy state of London, by rendering unnecessary the clearing away of old overcrowded dwellings in the vicinity, on the score of obtaining space near the present Inns of Court for the proposed new Law Courts; and,

"4. That the only intelligible ground for the proposition, candidly set forth by one of the trustees, a proprietor of property in Lincoln's Inn Fields, but not a resident—viz., the augmentation in the value of such property, and the prevention of the deterioration of such value, as a consequence of the Law Courts occupying the site of the present gardens in the square—was one which the increased and increasing sense of public morality would scout; and I concluded by expressing my conviction that let the majority in favour of the proposition be what it might, the trustees would only stultify themselves in carrying it, for public opinion, as at present enlightened on the nature and importance of preventive sanitary measures, would never permit such a proposition as covering Lincoln's Inn Fields with smoke-emitting buildings, obstructive of free ventilation, to be carried into effect. The motion, nevertheless, was carried by a majority of trustees, holders of property, but not resident in Lincoln's Inn Fields; and the same result took place at the meeting of freeholders and leaseholders of Lincoln's Inn Fields, held afterwards at the Freemasons' Tavern, the non-resident freeholders being the majority."

Dr. Lewis thus concludes :—

"If a site should be required for the erection of Law Courts in the neighbourhood in question, I would suggest that that portion of the parish of St. Clements Danes that is now covered with the close, overcrowded courts and alleys above-described should be selected in preference to the square which is now offered for that purpose. When cleared of its present unhealthy tenements, the site in question would, from its immediate contiguity to the Temple, as well as to Lincoln's Inn, be much more convenient to the two great branches of the Bar, and consequently to the Public; and the removal of the Law Courts, instead of injuring the neighbourhood in which they would be established, would be productive of vast benefit to the entire metropolis, by sweeping away one of the worst hotbeds of disease within its limits."

MORTMAIN BILL.

THE following provisions in the Mortmain Bill require the attention of solicitors in the preparation of wills, and especially those who may be concerned for Charitable Institutions :—

By the 13th section of this Bill, it is proposed to enact, that "it shall be lawful for any person to bequeath any description of personal estate to any charitable purpose, subject to the following conditions ;

"That the will shall be duly executed and attested *three* months before the death of the testator, and that within *one month* after the date or execution thereof, a notice signed by the testator of the amount so given, and the nature of the trust to which it is given, shall be delivered to the Charity Commissioners ;

"Provided always, that if the will is executed by any person not at the time within Great Britain or Ireland, it shall be sufficient if the notice above required be sent by the post to the said Charity Commissioners within the period of *one month* from the date of the execution of the will."

NOTICES OF NEW BOOKS.

The Laws of the Customs, consolidated by direction of the Lords of the Treasury (16 & 17 Vict. c. 106 and 107). *With a Commentary—Forms—Notes of Decisions in Customs Cases—an Appendix of the Act, and a copious Index.* By FELIX JOHN HAMEL, Esq., Solicitor for her Majesty's Customs.

It would be difficult to instance a more successful specimen of Statute Law consoli-

dation than was effected by the two enactments relating to the Customs, passed in the Session of 1853. Before the execution of this arduous and important task, the law upon the subject had to be looked for through a complicated wilderness of no less than twenty separate Statutes. This was a grievance of the greatest possible public inconvenience, but peculiarly oppressive on that commercial community who are interested in an acquaintance with the obligations of Revenue Law. It was so felt by the Solicitor of Customs; and with the cordial concurrence, as he assures us, of the Commissioners, he projected and achieved a thorough correction of the evil.

If we do not forget, some jealous champion of Bar monopoly, some time ago, insisted that the office of Solicitor of Customs should be one of the exclusive prizes of barristers. The practice for a series of years gave some foundation to this unreasonable and arrogant pretension. It was, however, discovered after a rigid inquiry into the constitution and exigencies of the legal department of the Customs, that barristers made the most inefficient possible solicitors; and, on the recommendation of Sir Alexander Spearman and Mr. Hayter, the solicitorship became the prize of the Attorney Profession.

Need we do more in vindication of what was recommended by the above-named gentlemen, than point to what has been done by Mr. Hamel? What solicitor of customs, during the period that the office was exclusively held by barristers, ever accomplished so arduous a task? Be it understood, that the work undertaken was not merely to classify, condense, group, and arrange the law as it existed. The whole was to be pruned of its verbosity, and a simple and perspicuous style of expression was to replace the phraseology of the old legislative draughtsmen. This Mr. Hamel has done, and to his own credit and that of the Profession of which he is a member—done with a success almost unexampled.

It seems scarcely credible, that within the compass of a single year the Customs Laws should be codified, and a treatise of the character now before us written by a single hand. But, it will add to the reader's surprise to be informed, that the labour was undertaken and the design carried through concurrently with Mr. Hamel's unremitting attention to his daily duties as solicitor. Yet we fail to discover in the work before us the evidences of an over-wearied or distracted mind. Had the volume been com-

posed in the most tranquil haunts of seclusion, and without any object to divert the Author's mind from its preparation, it could not exhibit more decided proofs of deep attention and learned research.

The interest of Mr. Hamel's Treatise affects three classes of the community in particular. The commercial body are primarily concerned in acquainting themselves with every item of its contents; the Custom-house officer has a commensurate interest; and, considering that it deals not only with the whole law for the recovery of duties, penalties, and forfeitures, but with that which regulates the institution of criminal proceedings on the prosecution of the Crown, we need scarcely say, that the interest of the lawyer in the volume cannot be inferior to that of either the merchant or the officer of Customs. It is a strange fact, that before the publication of this volume, no work on the Customs Laws attempted even the slightest reference to the many reported decisions in Customs cases. Mr. Walford's book, though compiled by a barrister, was a mere edition of the Statutes as they existed at its date. Mr. Hamel's work evinces a thorough intimacy with the learning of revenue law, as abounding in the reports, especially in the Court of Exchequer, and also, as examined in the manuscript reports taken in short hand for the Customs Department. In this respect the Author has conferred a signal benefit on the entire Legal Profession. But, the boon will be peculiarly serviceable to the Attorneys, bearing in mind the circumstance, that a large class of actions and informations, which could not be tried elsewhere than in the Court of Exchequer under the former Statutes, may under the new Act be brought in the County Courts; or before the Justices at Sessions. The course to be advised upon by the professional man is so dependent upon nice discriminations, as to peculiarity of circumstances and applicability of jurisdiction, that Mr. Hamel's lucid explanations appear an essential key to the Act; and ought therefore to be in the hands of every lawyer.

We regret not being able to make room for some extracts from the elegantly written historical introduction to the work, nor to add further to our unqualified testimony of the ability with which the volume has been composed, than to repeat our opinion that the Customs Department have every reason to felicitate themselves on the production, by one of their own chief officers, of a treatise evincing so much learning and talent.

LONDON COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

FURTHER REGULATIONS.

In consequence of the great number of gentlemen already appointed London Commissioners to administer Oaths in Chancery, the Lord Chancellor will not make any further appointments at present, unless, in addition to the certificates now required, the applicant produces one signed by two householders, stating the necessity for an additional appointment, and a statement of the number of Commissioners within a quarter of a mile of the applicant, and that he himself carries on his business upwards of a mile from Lincoln's Inn Hall.

By order of the Lord Chancellor.

(Signed) W. C. SPRING RICE.
May 6, 1854. *Principal Secretary.*

COUNTRY COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

FURTHER REGULATIONS.

THE applicant must be a practising solicitor of ten years' standing: he will be required to leave with the usual certificate signed by two barristers a memorial signed by some of the public functionaries and professional persons in the town where he resides, that he is a fit and proper person for the office of a Commissioner, and that an additional one is required to administer oaths in the particular town or district.

By order of the Lord Chancellor,
(Signed) W. C. SPRING RICE.

May 6, 1854. *Principal Secretary.*

ACKNOWLEDGMENTS OF MARRIED WOMEN.

APPOINTMENT, DUTIES, AND FEES OF COMMISSIONERS.

HAVING received inquiries on the subject of the authority, duties, and fees of Perpetual Commissioners appointed under the Fines and Recoveries' Abolition Act, we subjoin the substance of the enactments and Rules of Court on the subject:—

Under sect. 79 of the 3 & 4 Wm. 4, c. 74, every deed by a married woman, not executed by her as protector, must be acknowledged by her before a Judge of one of the Superior Courts at Westminster,¹ or before two Justices of the Peace.

¹ Masters in Chancery were authorised to take acknowledgments; but their office being abolished, the power has ceased.

tual Commissioners; &c., and under the 80th section, before such acknowledgment is received, she is to be examined apart from her husband.

Perpetual Commissioners are appointed under the authority of sect. 81, by the Lord Chief Justice of the Court of Common Pleas, and the proceedings are regulated by the General Rules of Hilary and Trinity Terms, 4 Wm. 4.

Under the 2nd rule of Hilary Term, it is necessary that one at least of the Commissioners shall be a person who is not in any manner interested in the transaction giving occasion for the acknowledgment, or concerned therein as attorney, solicitor, or agent, or as clerk to any attorney, solicitor, or agent so interested or concerned. Commissioners have a lien on the deed, certificate, &c., for their fees: *Ex parte Grove*, 3 Bing. N. S. 304.

The fees are fixed by rule 8 of Hilary Term, 4 Wm. 4: the items are as follow:—

To the two Perpetual Commissioners for taking an acknowledgment of every married woman, when not required to go further than a mile from their residence, being 13s. 4d. for each Commissioner £1 6 8

To each Commissioner, when required to go more than one mile, but not exceeding three miles, besides his reasonable travelling expenses £1 1 0

To each Commissioner, where the distance required shall exceed three miles, besides his reasonable travelling expenses . . £2 2 0

And by the 2nd rule of Trinity Term, 4 Wm. 4, where more than one married woman shall at the same time acknowledge the same deed, respecting the same property, the fees directed by the rules of Hilary Term to be taken, shall be taken for the first acknowledgment only; and the fees to be taken for the other acknowledgment or acknowledgments, how many so ever the same may be, shall be one-half of the original fees; and so also, where the same married woman shall at the same time acknowledge more than one deed respecting the same property; and in every case, the acknowledgment of a lease and release shall be considered and paid for as one acknowledgment only.

According to *Ex parte Webster*, 1 Dowl. N. S. 678; 4 Scott, N. R. 636, the Commissioners must be appointed for the same district, although under s. 82 a "Commissioner for any particular county, &c., shall be competent to take the acknowledgment of any married woman wheresoever she may reside, and wheresoever the lands or money, in respect of which the acknowledgment is to be taken, may be;" but they can only act in the county for which they are appointed: *Webster v. Carline*, 4 Man. & Gr. 27.

STATISTICS OF THE COUNTY COURTS.

ANALYSIS OF PARLIAMENTARY RETURN OF BUSINESS,

From 1st January to 31st December, 1852.

1. Number of *plaints entered*:
Above 20l., and not exceeding 50l. 12,567
Not exceeding 20l. 461,582
1 474,149
2. Number of *plaints tried*:
Above 20l. and not exceeding 50l. 7,020
Not exceeding 20l. 237,618
2 244,638
3. The number of days that the 60 Courts have sat, is 8,570.³
4. The total amount of moneys for which *plaints* were entered, is 1,579,318l.
5. The total amount of moneys for which judgment has been obtained, exclusive of costs, is £797,997
And the amount of such costs⁴ is 190,480
£988,477
6. The amount of moneys paid into Court, in satisfaction of debts sued for, without proceeding to judgment, is . . . £107,979
7. The total of the Judges' fund and officers' fees, is £228,533
Which consists of Judges' fees £84,390
Clerks' fees, including those in cash book and in execution book 84,370
Bailiffs' fees, including those on executions 59,773
General fund 41,252
- Gross total of moneys received . . £269,785
8. The total amount of moneys received to the credit of the suitors was . . . £630,371
And the amount paid out . . . 630,688
9. The number of causes tried by a jury is 796, in 404 of which the party requiring the jury obtained a verdict.
10. The number of executions issued by the clerk of the Court against the goods of defendants is 62,391
11. The number of warrants of commitments

¹ This is exclusive of 1,261 summonses after judgment, and 35 successive summonses under rule 41. The average amount of each plaint is 3l. 6s. 7d., or 7s. less than the average in the year 1851.

² Exclusive of 22 summonses after judgment.

³ This would make an average for each Court of nearly 143 days, or 24 weeks, in the course of the year, and includes sittings for insolvency business.

⁴ This amount includes the allowance to counsel, attorneys, and witnesses, which are frequently considerable.

issued by the clerk of the Court is 11,044, under which 5,231 persons were actually taken to prison.

The number of appeals entered under the 13 & 14 Vict. c. 61, from 1st Jan. to 31st Dec., 1852, both inclusive, was 37, and 6 were pending on 1st Jan., 1852, of which 8 were confirmed, 13 were reversed, 12 were dropped, and the other 10 remain undecided.

The number of plaintiffs entered by consent of parties under the 13 & 14 Vict. c. 61, s. 17, from 1st Jan. to 31st Dec., 1852, both inclusive, was 25, of which 19 were tried.

The total amount received by the treasurers on account of the general fund for the same period was £42,922

And the payments . . . 43,221

RECEIVING MONEY OUT OF COURT.

NEW REGULATION OF THE QUEEN'S BENCH.

THE Common Law Procedure Act requires an authority to be signed by the plaintiff authorising his (her or their) attorney to receive the money out of Court.

It is requested that the authority be in some-thing of the following form, viz:—

In the Queen's Bench.

Between *A. B.*, plaintiff,

v.

C. D., defendant.

I hereby authorise *Mr. E. F.*, my Attorney, to receive out of Court the sum of £ paid in on the day of by the defend-ant in this cause. Dated the day of 185

(Signed) *A. B.*,

the above-named plaintiff.

To the Masters of the Court of Queen's Bench.

In agency cases the agent must be described as the attorney.

It is requested that parties should furnish themselves with the necessary receipt stamp on leaving their papers one day for the next.

Where the plaintiff is out of the jurisdiction, it is necessary that a Judge's order should be obtained.

LAW OF ATTORNEYS AND SOLICITORS.

SOLICITOR ACTING AS MONEY SCRIVENER FOR CLIENT.—LIABILITY FOR INSUFFICIENCY OF SECURITY.

It appeared that a Miss Morris had from time to time placed in the hands of Mr. Dixon, deceased, who had acted from 1837 as her solicitor and adviser in money affairs, considerable amounts, for which he undertook to find securities, and that he had placed out certain sums on insufficient securities.

On a claim by Miss Morris under a decree in a creditor's suit against his estate, the Vice-Chancellor *Kindersley* said,—“Taking, first, the advance to Russell. The security is a reversionary interest in Russell, expectant on the death of his mother, and there is no doubt that Miss Morris was made aware that the property was reversionary; but she was also informed that it was an ample and sufficient security; * * and that she might have to wait for her interest; but it was not stated to her that its whole value depended on Russell dying leaving children, living his mother. That was not communicated to her, and, without doubt, on these facts Dixon was liable in some form to Miss Morris.

“Take next Horen's case. The conclusion at which I have arrived as to the facts is this:—Dixon had, as Miss Morris represents, a great interest in Horen. Dixon's brother had lent to Horen 450*l.* He had therefore a particular interest in Horen. Then, under his recommendation, Miss Morris advanced two sums of 500*l.* and 200*l.* to Horen, on what was represented to her to be a good security, she being wholly ignorant what it really was. It turns out that, as to the 200*l.*, the security was a piece of land held under a lease for a term of 45½ years, at a ground rent of 25*l.* a year, and subject to rates, taxes, &c. But, on application for information being made to the ground landlord, it turns out that neither Horen, the mortgagor, nor any person on his behalf, ever took possession of the property, or even paid any rent for it. The landlord had never heard of any dealings by Horen with the property, and had considered and treated the lease as abandoned. I am of opinion, without any doubt or hesitation, that, as to that sum, Dixon is liable.

“So, as to the 500*l.*, that was advanced on the security of leasehold property, as to part of which only 6½ years of the term remained, and as to other parts of which the outgoings are so great that the security is absolutely worthless.

“Next, as to the money advanced to Gilbert. There is no direct evidence to show that the security was not at the time of the advance of sufficient value. Dixon having moneys of Miss Morris in his hands, which he had undertaken to advance for her on securities, lent it to Gilbert, and in his account charges it accordingly. *Prima facie*, I should not have considered this case as standing on the same

grounds as the others, there being nothing to show that the security was not originally a proper security, nor to show that even now it would not realise a sufficient amount. But then, this takes place about a year after Dixon himself bought Gilbert's equity of redemption, and so became himself the mortgagor, and he continued to pay interest. It appears to me that, under these circumstances, there was neither fraud nor negligence; but Dixon is responsible as mortgagor. In that character the 350*l.* is a good charge against him.

"Now, as to the form in which Dixon is to be held liable. * * * It is a question of account between Miss Morris and Dixon. *Prima facie*, his accounts would be binding; but (and I am regarding Miss Morris's claim as if she had made it during Dixon's life) if Miss Morris had filed her bill, then on proof of the facts of this case, she might have surcharged and falsified the account, by showing the misrepresentations as to the investments.

"This is not, then, a mere legal demand for damages; it is a question of items in an account; a question how far, under the circumstances, Dixon can discharge himself by the disbursements made by him." *Smith v. Pockocke*, 2 Drewry, 197.

share is definitely ascertained, because the amount of her share is, or might be, a material element in inducing her to give that consent. On the other hand, if I now simply make an order to tax the costs, a second application to the Court will become necessary, and will be the occasion of further expense and delay, —two things from which I am always most anxious to save the parties. If the amount of Mrs. Jolly's share were below 200*l.*, in the ordinary course of practice, the Court would order the legacy to be paid to her husband, without her consent. In the present case, having regard to the testator's property, I find that Mrs. Jolly's share cannot amount (before payment of costs) to more than about 300*l.*, and when the costs are taxed and paid, will not probably much, if at all, exceed 200*l.* Under these circumstances, therefore, I think that an arbitrary rule of the Court, though a wholesome and judicious rule in general, ought to give way when the justice of the case and convenience of the parties require it, and I shall therefore direct Mrs. Jolly's share to be paid to her husband." *Roberts v. Collett*, 1 Smale & G. 138.

LAW OF EVIDENCE.

POINTS IN EQUITY PRACTICE.

TAKING BILL PRO CONFESSO AGAINST DEFENDANT IN IRELAND.—SERVICE OF NOTICE OF DECREE.

AN office copy of a decree to take the bill *pro confesso* against a defendant residing in Ireland, and of an order limiting the time within which he should apply for permission to put in his answer and set aside the decree after service of notice for that purpose, was duly served on such defendant.

The *Master of the Rolls* held such service of the order a sufficient notice under the 87th Order of May 8, 1845, and upon the defendant not applying accordingly, made the decree absolute under Order 90. *Trilly v. Keefe*, 16 Beav. 83.

ADMINISTRATION CLAIM.—PAYMENT TO HUSBAND OF SHARE OF MARRIED WOMAN.

On an application for payment to her husband of the share of a married woman in an estate in course of administration by claim, Vice-Chancellor *Stuart* said, "The Court cannot take Mrs. Jolly's consent until her

EXTRINSIC EVIDENCE OF DESCRIPTION OF LEGATEE IN WILL.

A TESTATOR appointed as his residuary legatees *John Wheeler*, *George Wheeler*, *Mary Wheeler*, widow, and *William Wheeler*, "the children of my mother's sister." There was evidence that the testator was aware of the death of *John Wheeler* before the date of the will, leaving a son of the same name, to whom the testator had intimated he had left some benefits by his will. It appeared that there was no child named *Mary Wheeler*, but she was the widow of a child named *Richard*, and there was evidence the testator had stated to her he had done something for her by his will.

The *Master of the Rolls*, on the petition of *John* and *Mary Wheeler* claiming to be entitled, said, "There is clear evidence that the testator knew that there was no such person living as *John*, the son of *Mary*, yet he introduced the description of such a person in his will, the only *John Wheeler* then existing being the grandchild. I think it is not too much to say, that *John Wheeler*, the grandson, was intended, there being no other child of this name, and there being distinct evidence, that

the testator stated to him that he intended to leave him something.

"He has made a gift to Mary Wheeler, the widow, described as a child of his aunt. But under the circumstances, and there being evidence of an intention to benefit her, I must hold that he intended to include her." *In re Blackman*, 16 Beav. 377.

SECONDARY EVIDENCE OF DEED, WHEN NOT RECEIVABLE.

Held, that a paper which an attorney admitted to have been delivered to the defendants from his office as a copy of a deed, but which he stated he was unable of his own knowledge to vouch to be a copy, was properly rejected as secondary evidence of the deed, which the attorney declined to produce upon the ground that it was the title-deed of his client. *Volant v. Soyer*, 13 Com. B. 231.

LAW OF COSTS.

OF PETITION UNDER TRUSTEES' ACT, 1850, TO OBTAIN SURRENDER.—VENDOR AND PURCHASER.

On a sale of copyholds, the vendor contracted to surrender, or procure some person to surrender,—the costs of the surrender to be borne by the purchaser. The heir was unknown, and it therefore became necessary to present a petition under the Trustees' Act, 1850 (13 & 14 Vict. c. 60), for the appointment of a person to surrender. The question arose as to whether the costs of such petition were payable by the vendor or by the purchaser.

The *Master of the Rolls* said, "The costs of sale, in the absence of contract, fall on the vendor, and the costs of preparing the conveyance on the purchaser; but the costs of executing it must be paid by the vendor.

"Here the contract is, that the vendor shall surrender or procure some person to surrender, and that the costs of the surrender shall be borne by the purchaser. There is a difference between the mere act of surrendering and the steps which may be necessary for the purpose of procuring some proper person to perform that act. They are distinct, and the costs of procuring some proper person to surrender must, on ordinary principles, be paid by the vendor, and the costs of the surrender by the purchaser." *Bradley v. Minton*, 18 Beav. 294.

OF APPEARANCE OF LEGAL PERSONAL REPRESENTATIVE ON HEARING OF PETITION TO WIND UP SUIT.

ALL proceedings in a cause had been by order stayed as against the legal personal representative of the testator, but his solicitor was served with a petition, which was presented to wind up the suit and to carry over to particular accounts the funds standing to the general credit of the cause, with notice that he was not interested, and should not appear at the hearing. The *Master of the Rolls*, nevertheless, gave him his costs of appearance on the petition, as also to the purchaser of a part of the estate. *Rowley v. Adams*, 16 Beav. 312.

QUERIES OF ARTICLED CLERKS.

INTERVAL OF SERVICE.—ILLNESS.

B. was articled and served a year, when he was taken ill and returned home. He attended almost daily at the attorney's office and did some professional work, and also studied classics with a tutor. Will the intervals of attendance be reckoned under the circumstances as good service under his articles? *L.*

[The intervals of service occasioned by illness will, we think, be reckoned. One of the Examiners' questions seems to contemplate such absence, and requires the cause of absence to be stated as well by the attorney as the clerk. In the case *Ex parte Matthews*, 1 B. & Ad. 160, the Court allowed the applicant to be admitted, although he had been absent from illness nearly two years, attending only as his health permitted.—*Ed.*]

SERVICE OF A GRADUATE.

A graduate clerk, articled for three years, may serve one year with a London agent, but may not serve with a barrister, while a non-graduate clerk, articled for five years, may serve one year with a barrister and one year with the London agent. Of the two classes of clerks, the graduate clerk would be most benefited by a systematic course of study in a barrister's chambers. *H.*

[The Legislature evidently considered that the practical skill and knowledge required by an attorney can in general be obtained only by a service of three years in an attorney's office, either in town or country. The graduate may afterwards extend his studies in a barrister's chambers; but we think he cannot make himself master of the details of the business of an attorney and solicitor in less than three years.—*Ed.*]

HOLDING OFFICE DURING CLERKSHIP.

Can a clerk, while serving under articles, hold the office of *Town Clerk* of a borough without vitiating the service? The duties of the office are very slight, and will not, on the average, occupy one day in a month; but the duties cannot be performed in over hours.

[The office of *Town Clerk* being usually held by an attorney, we think the occasional attendance to discharge the duties of that office will not prejudice the articles of clerkship. It has been held by the Examiners that an attitled clerk may hold the office of Deputy Coroner. At all events, it is clear that the service may be subsequently made up.—ED.]

SELECTIONS FROM CORRESPONDENCE.

RENT UNDER INSOLVENCY.

THE Law preserves for a landlord, a year's rent under a *f. fa.*, but in too many cases he loses it. In the case of an insolvent debtor, I think that his property or effects should in all cases be liable to make good the rent not exceeding a year. And in cases where the debtor has clandestinely removed his goods whereby a loss of rent is incurred, he should not be allowed the benefit of the Act until that rent was made good. It would also be convenient to provide in cases of clandestine removal of goods to avoid a distringment, that on their being followed by the landlord within the 30 days, they should be held and considered the identical goods, and that the onus should lie on the tenant to prove the contrary: the difficulty in proof is almost insurmountable at present. Will no member take this into consideration and prepare a Bill to remedy the defects?

AMICUS.

ASSAULTS UPON WOMEN.

It appears to be admitted on all hands that an imprisonment of six months with hard labour is inadequate to put an end to, or even diminish, the evil of brutes in human shape cruelly beating their wives, whom they have sworn to cherish. It may be well worth consideration whether, if power were given to the justice or two justices to superadd 40 lashes save one, in very serious cases,—a remedy to a more extended degree, which would effectually, when soundly applied, put an end to Ribbonism in Ireland. At least, such is the opinion of many enlightened individuals in the Emerald Isle.

L.

PURCHASE OF AN ALIEN.

An alien, nearly 20 years ago, purchased some freehold property within a manor belonging to the see of Canterbury. The alien died, when his nephew, a Swiss, also an alien,

entered into possession, and within the last 10 years sold and conveyed it for a valuable consideration to a British-born subject, who continues in possession. Has he a good title? and if not, would the Crown, on a memorial being presented, confirm the title? and if so, what are the usual terms of so doing?

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STATE OF LAW BILLS IN PARLIAMENT.

House of Lords.

Second' Common Law Procedure, 1854.—Lord Chancellor. In Select Committee. May 10.
Declaratory Suits.—Lord Brougham. For 2nd reading, put off *sine die*.
Arbitration Law Amendment.—Lord Brougham. In Select Committee, May 10.
Disboured Bills of Exchange.—Lord Brougham. In Select Committee, May 10.
Conveyance of Real Property Act Amendment.—Lord Brougham. For 2nd reading.
South Sea Trust Company. In Select Committee.
Executor and Trustee Society.—Referred to Standing Order Committee, May 16.
Manchester Court of Record.—Referred to two Judges.

House of Commons.

Testamentary Jurisdiction.—For 2nd reading, May 15.
Judgment Execution.—Mr. Crauford. In Select Committee.
Witnesses.—Mr. J. Butt. For 3rd reading, May 12.
Extension of Cornwall Stannaries' Court.—Mr. Collier. For 2nd reading, May 18.
Total repeal of Punishment of Death.—Mr. Ewart, May 30.
Criminal Procedure.—Mr. Aglionby. For 2nd reading, May 19.
Appointment of Public Prosecutors.—Mr. John G. Phillimore. For 2nd reading.
Police (England and Wales).—Viscount Palmerston.
Registration of Bills of Sale.—In Committee, May 17.
Mercantile Laws of England and Scotland.—Mr. R. Phillimore.
Apportionment of Rent, &c.—Sir William Molesworth.
Friendly Societies' Regulation.—Mr. Stotheron. In Select Committee.
Industrial and Provident Societies.—Visct. Goderich. For 2nd reading, May 16.
Merchant Shipping.—For 2nd reading, May 15.
Property Disposal.—Mr. Whitehead. For 2nd reading, May 24.
Mortmain.—Mr. Headlam. In Committee, May 17.
Drainage of Land.—Mr. Ker Seymour. For 2nd reading, May 17.
Real Estate Charges.—Mr. Locke King. For 2nd reading, May 18.

NOTES OF THE WEEK.

LAW PROMOTION.

THE Queen was this day (3rd May) pleased to confer the honour of Knighthood upon Richard Budden Crowder, Esq., one of the Judges of her Majesty's Court of Common Pleas. From the *London Gazette* of May 5.

INNS OF COURT COMMISSION.

The Queen has been pleased to appoint Sir William Page Wood, Knight, a Vice-Chancellor; Sir John Taylor Coleridge, Knight, one of the Justices of the Court of Queen's Bench; the Right Honourable Joseph Napier; Sir Alexander James Edmund Cockburn, Knight, her Majesty's Attorney-General; Sir Richard Bethell, Knight, her Majesty's Solicitor-General; Sir Thomas Erskine Perry, Knight; John George Shaw Lefevre, Esq.; Henry Singer Keating, Esq., one of her Majesty's Counsel;

Thomas Greenwood, Esq.; James Stewart, Esq.; and Germain Lavie, Esq., to be her Majesty's Commissioners for inquiring into the arrangements in the Inns of Court and Inns of Chancery, for promoting the study of the Law and Jurisprudence, and securing a sound education to the students.—From the *London Gazette* of 5th May.

QUEEN'S BENCH SITTINGS IN BANC.

This Court will, on Saturday the 13th day May inst., hold a Sitting, and will proceed in disposing of the business now pending in the Special and New Trial Papers, and give judgment in cases previously argued.

NEW MEMBER OF PARLIAMENT.

The Honourable *Thomas Edward Mostyn Lloyd Mostyn*, for the County of Flint, in the room of the Honourable Edward Mostyn Lloyd Mostyn, now Lord Mostyn, summoned to the House of Peers.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lords Justices.

In re Thompson's Trust. May 8, 1854.

WILL.—CONSTRUCTION.—REQUEST BY REFERENCE.

A testator bequeathed a sum of stock to his daughter Elizabeth, and her issue, with benefit of survivorship on the death of any child under 21, and in case there should be no child or children living at the time of her death, or being any they should die under 21, then unto all and every his children then living, and the child or children of such his said children as should be then dead in equal shares per stirpes. The testator also gave a further sum of stock to another daughter, M., on similar trusts as expressed concerning the legacy to Elizabeth, and in default of issue in favour of his other children. It appeared that a child, who was dead at the date of will, had left three children: Held, confirming the decision of Vice-Chancellor Wood, that they were not entitled.

THE testator, by his will, dated in February, 1837, gave a sum of 15,000*l.* 3 per cent. consols., in trust to pay the dividends thereon from time to time to his daughter Elizabeth, wife of Thomas Sutton, for life for her separate use, and after her death, or in case she should assign, incur, or anticipate, then in trust to pay and transfer the 15,000*l.* unto and among all and every of her children, to be equally divided between them, if more than one, share and share alike; and if but one, then to such only child. He directed the shares to be payable at 21, and that if any of the children should die under 21, the share of the one so dying should go to the survivor or survivors of them at such time as the respective original share or shares should become payable, and that such surviving or accruing

share or shares should also from time to time survive in the same manner as the original shares, until the several shares should become payable. The testator further directed, that in case there should be no child or children of his said daughter living at the time of her decease, or of any sale, assignment, or incumbrance or anticipation by her, or being any they should die under 21, the 15,000*l.* should go unto all and every his children then living, and the child or children of such of his said children as should be then dead, in equal shares and proportions, but so that such his grandchildren should only have and be entitled among them to such share or shares as their parent or parents would respectively have been entitled to in case they had been then living. There was a like sum of 15,000*l.* given to another daughter, Anne Cresswell, and also a further sum of 10,000*l.* to his daughter, Mrs. Metcalf, on similar trusts as expressed concerning the legacy of Mrs. Sutton, and in default of issue, in favour of his other children and their issue, or as near thereto as the death of persons and other circumstances would permit. It appeared that at the testator's death, there were two sons and the three above-named daughters surviving, and that another daughter named Mary Anne Tunstall, was dead at the date of the will, but had left three children, and that Mrs. Metcalf died in April, 1853, without issue. The children of Mrs. Tunstall now claimed a fifth part of the 10,000*l.* given to Mrs. Metcalf. The Vice-Chancellor Wood having held that they were not entitled, but that the four surviving children took the 10,000*l.* stock, this appeal was presented, (reported 2 Equity Reports, 236).

Walker, Amphlett, and Haynes in support; *Chandless and Haldane* for the executors, contra.

The Lords Justices said, that the appeal must be dismissed, but without costs.

Master of the Rolls.

Baker v. Read. April 28, 29, 1854.

BILL TO SET ASIDE SALE AS FRAUDULENT.—LACHES.

A bill filed in 1850 was dismissed without costs, to set aside the purchase in 1833 of certain property by the defendant, and which he held as executor under a will in trust for sale—where there was no excuse shown for the delay.

THIS was a bill to set aside the purchase of certain property by the defendant, and which he held, as executor, under a will in trust for sale.

The Master of the Rolls said, that the transaction took place in 1833, and the bill was not filed till 1850. There was no evidence to show that the parties did not know at the time they were selling to their trustee, although by the rules of this Court he was not permitted to purchase from his *cestuis que trusts*. It appeared they had a solicitor to advise and protect them, and, although, if the application had been sooner, they could have obtained a decree to set it aside, upon the evidence, that the property might have fetched a higher price, yet as no excuse was shown for the delay in coming to the Court, no relief could now be given: *Champion v. Rigby*, 1 Russ. & M. 539; *Lord Selsey v. Rhoades*, 1 Bli. N. S. 1; 2 Sim. & Stu. 41; *Gregory v. Gregory*, Coop. Chan. Cas. 201; *Jacob*. 631. The bill would therefore be dismissed, but without costs.

Vice-Chancellor Kindersley.

Ramsden v. Smith. May 8, 1854.

HUSBAND AND WIFE.—COVENANT BY HUSBAND TO SETTLE WIFE'S FUTURE PROPERTY.—CONSTRUCTION.

In a marriage settlement the husband covenanted that he would do all acts necessary for settling to the same uses as those mentioned in the settlement all property which might be given or bequeathed to his wife: Held, that property bequeathed to her separate use was not subject to the settlement, which only affected such property over which the husband had power, and that therefore the wife was entitled to have the same transferred to such parties as she might direct for her exclusive use.

By the marriage settlement of Mr. and Mrs. Ramsden, the former covenanted that he would do all acts necessary for settling to the same uses as those mentioned in the settlement all property which might be given or bequeathed to his wife. The trusts of the settlement were for the husband for life, with remainder to the wife for life, with remainder to the issue of the marriage. It appeared that certain property had been afterwards bequeathed to her separate use, and the question was, whether there should be a settlement of the same.

Baily and Grenside for the wife; *G. Lake Russell* for the husband; *Fleming* for the trustees.

The Vice-Chancellor said, the intention of the covenant was that property over which the husband had any power should be settled on the trusts of the settlement, and that in respect of the property in question, which was bequeathed to her separate use, he had no power, and it must be transferred to such parties as she might direct for her exclusive use.

Flight v. Camac. May 9, 1854.

VENDOR AND PURCHASER.—DEDUCTION OF INCOME TAX ON PAYMENT OF PURCHASE-MONEY INTO COURT WITH COSTS.

The deduction by a purchaser of income tax on the interest payable, was disallowed on payment of the purchase-money into Court, under the 16 & 17 Vict. c. 34.

Whitehead applied for the direction of the Court in reference to the right of a purchaser to deduct income tax on the interest payable, on payment of the purchase-money into Court. It appeared that the practice had been under the 5 & 6 Vict. c. 35, to disallow the deduction, but as the 16 & 17 Vict. c. 34, s. 40, entitled and authorised the purchaser to make the deduction, while in the former Act (s. 102) he was only authorised to deduct income tax, the question was now raised.

Jones Bateman for the vendors.

The Vice-Chancellor said, that although it might be just a purchaser should be entitled to deduct income tax, yet as the opposite practice had prevailed¹ and there was nothing in the new Act to alter it, it must be adhered to, and if an alteration were desired an application must be made to the Lord Chancellor.

Vice-Chancellor Stuart.

Brook v. Biddall. May 3, 1854.

ATTENDANCE OF WITNESSES BEFORE MASTER.—ORDER FOR A COMMITMENT ON DEFAULT.—COSTS.

An order was made, with costs, on motion ex parte for the attendance on the Master within four days to give evidence, of two clerks of a solicitor, or on default for their committal to the Queen's Prison, where they had omitted to attend in pursuance of a subpoena ad test. in consequence of their employer refusing to allow them to attend unless on payment of the usual fees.

THIS was an *ex parte* motion for an order on the two clerks of a solicitor to attend the Master within four days to give evidence, or on default for their committal to the Queen's Prison. It appeared that they had been served with a *subpoena ad test.*, but had made default in consequence of their employer refusing to allow them to attend unless on payment of the usual fees.

¹ See *Humble v. Humble*, 12 Beav. 43; *Holroyd v. Wyatt*, 1 De G. & S. 125.

J. H. Palmer, in support, cited *Hennegal v. Reeves*, 12 Ves. 201.

The Vice-Chancellor granted the application, with costs.

Cooks v. Wagster. May 3, 1854.

WILL.—CONSTRUCTION.—WHAT PASSES UNDER WORDS “READY MONEY.”

A testator gave to his widow all his ready money and securities for money, money in the funds, and money in the bank, if any, which might be due and owing to him at his death: Held, that a sum in the hands of a person for investment, and for which the testator's personal representative had proved in an administration suit of such person's estate, passed to the widow, where there would otherwise be an intestacy.

THE testator, by his will, dated in April, 1848, gave to his widow all his ready money and securities for money, money in the funds, and money in the bank, if any, which might be due and owing to him at the time of his death. It appeared that the testator had directed his solicitor to pay a portion of the proceeds of sale of a real estate to a Mr. Chambers, a surveyor, for investment; and that at the time of Mr. Chambers' death the same remained in his hands. The testator's personal representative had obtained the allowance in an administration suit of a claim for such amount after deducting a sum due from the testator, and the question now arose, whether such amount passed to the widow under the will.

Prior and Eddis for the plaintiff; *C. Hall* for the personal representative.

The Vice-Chancellor said, that, having regard to the circumstance that there would be an intestacy as to the amount in question if it did not pass under the gift, and the testator's intention would not be accomplished by its exclusion, it must be held to pass under the words “ready money” to the widow.

Vice-Chancellor Hand.

Clive v. Clive. May 4, 1854.

WILL.—CONSTRUCTION.—PERSONAL OCCUPATION OF HOUSE.—CALLS ON SHARES PAYABLE OUT OF RESIDUE.—DIVIDENDS.

A testator gave all his freehold and leasehold property, &c., in trust to permit his wife pendente viduitate to have the use and enjoyment of his house, &c., and of all his household furniture, &c., for her natural life, and also the interest and annual income arising from shares in a navigation company: Held, on special case, that she was not restricted to the personal use and occupation of the house and furniture, that calls on the shares made soon after the testator's death were payable out of the residuary estate, and that she was entitled to the dividends thereon, upon the construction of the company's deed of settlement under which the dividend was held in suspense

until some other person became the proprietor.

THE testator, by his will, dated in June, 1852, after directing the payment of his debts and funeral and testamentary expenses, gave all his freehold and leasehold property, and his trades, ready money, mortgages, shares in public companies, and all other his estate and effects, in trust to permit his wife to have the use and enjoyment of his house, garden, and premises situate at Handworth, free of ground rent, and also the use and enjoyment of all his household furniture, &c., then in and about the said house, for the term of her natural life *durante viduitate*, and also by codicils the interest and annual income arising from certain shares in the Peninsular and Oriental Steam Navigation Company. The testator died in November, 1852, and a call was afterwards made on some of the shares, and in the following December a dividend was declared in respect of the earnings up to the preceding Michaelmas. It appeared that by the company's deed of settlement the net profits were divisible rateably among the proprietors to such an amount as the directors should decide on and declare at the annual or half-yearly general meeting, and no holders of shares were entitled to any dividend thereon declared after they should have ceased to be proprietors thereof. This special case was now stated for the opinion of the Court, on the questions whether the widow was restricted to the personal use and occupation of the house and furniture, or whether she might let it; whether the calls on the above shares were payable out of the residuary estate or by the widow; and whether the dividend declared in December formed part of the residuary estate or belonged to the widow.

Roll and Karslake for the executors; *James and Morris* for the widow; *Bovill* and *T. H. Terrell* for other parties.

The Vice-Chancellor said, that the widow and all persons claiming under her were entitled to have the use and enjoyment of the house and furniture during her widowhood, and that in accordance with *Jacques v. Chambers*, 4 Rail. Ca. 499, the calls on the shares were payable out of the testator's residuary estate. As the testator must be taken to be aware of the effect of the deed of settlement, and the dividend would, under it, be held in suspense until some other person became the proprietor, and the case amounted to a specific devise, the widow was entitled to the dividend, and there would be a declaration accordingly.

Court at Queen's Bench.

Esparte Bailey and another. May 1, 1854.

CONVICTION OF COLLIERIES FOR ABSENTING THEMSELVES FROM MASTERS' SERVICE.—ORDER OF COMMITMENT.

Held, that the order of commitment by a justice under the 4 Geo. 4, c. 34, of colliers for absenting themselves from their masters' service without their consent and without

any lawful excuse, need not set out that the witnesses were examined in their presence, provided it shows a contract to serve within the Act.

It appeared that two colliers had been convicted, on the complaint of the agent of Messrs. Marshall, for absconding themselves from their service without their consent and without any lawful excuse, and an order for their commitment to prison for two calendar months, with hard labour, was thereupon made by one of the justices for the county of Monmouth. The commitment set out that the defendants had contracted with Messrs. Marshall in the capacity of colliers for the term of one month, and so on from month to month, determinable upon either party giving one month's notice, for the wages of 1s. 10d. per ton for cutting coal. A *habeas corpus* had been granted, and the prisoners were discharged on recognizances, and this motion was now made to discharge such recognizances.

Smythies in support, on the ground that the warrant was bad for not setting out that the witnesses were examined in the prisoner's presence, that they had not entered into any contract of service, nor were guilty of any breach of contract.

Huddleston, contra.

The Court said, the warrant appeared to have been made in execution of a preceding conviction, and did not therefore require the strictness contended for. It showed there was a contract to serve within the 4 Geo. 4, c. 34, and it was for the justice to determine whether there had been any breach. The motion would accordingly be refused.

Coke v. Bishop. May 1, 1854.

NEW TRIAL ON DISCOVERY OF FRESH EVIDENCE.—PAYMENT INTO COURT.—COSTS.

In an action to recover the balance due under an agreement for the purchase of a business, the defendant pleaded fraud, but being unable to support the plea, the plaintiff obtained a verdict. Fresh evidence was afterwards discovered, held, that a new trial could only be granted on payment of the sum into Court as well as of the costs.

This was a rule nisi obtained by *M. Chambers, Q. C.*, on April 19 last, to set aside the verdict for the plaintiff and for a new trial of this action, which was brought to recover the sum of 200*l.*, the balance due under an agreement entered into by the defendant to purchase a business carried on by the plaintiff's wife in Pinlisco. It appeared that on the purchase being contemplated, the defendant had asked the production of the books, but that it had been stated none were kept, as it was a ready money business, and that thereupon the party for whom the defendant purchased had attended according to permission for a week, to see the extent of the business done, when it appeared it amounted to 30*l.* a week, whereupon the agreement had been signed. On the

trial before Lord Campbell, C. J., at the sittings after Michaelmas Term last, the defendant had failed in establishing his plea of fraud in the representation of the amount of the business which afterwards only turned out to be about 12*l.* a week, but it had been since discovered that the plaintiff had employed persons to purchase articles at the shop, and it was sought to have their evidence on the new trial.

E. James and Dowdeswell showed cause against the rule, which was supported by *Chambers and Needham*.

The Court said, that the rule would be absolute on payment of costs and the payment of the 200*l.* into Court.

Regina v. Justices of Staffordshire. May 8, 1854.

LIGHTING AND WATCHING ACT.—ADOPTION OF.—MEETING OF RATEPAYERS.

Held, that the meeting under the 3 & 4 Wm. 4, c. 90, of ratepayers of a district in order to adopt the provisions of the Act, must be called by the churchwardens of the parish in which the district is situate, and not by the chapelwardens of such district.

The objection of the meeting being properly convened may be taken on an application on justices to issue a distress warrant for rates, and is not affected by s. 66.

This was a rule nisi obtained on January 24 last, to issue a distress warrant for rates under the 3 & 4 Wm. 4, c. 90 (the Lighting and Watching Act).

It appeared that at a meeting, in the year 1851, of the ratepayers of the district of Brierly Hill, in the parish of King's Winford, it was resolved that the district should be placed under the provisions of the 3 & 4 Wm. 4, c. 90, and that inspectors had been accordingly appointed, who made an order on the overseers for a rate for the current year amounting to 150*l.* Before, however, the whole was collected, the overseers went out of office, and an order was made in 1853 for the collection of the arrears as well as of a new rate then made, and on the new overseers refusing to collect the same, they were summoned before the defendants, who however refused to issue their warrant an objection having been taken that the notice convening the original meeting of ratepayers was bad, and that the churchwardens of the parish, and not of the district, were the proper parties to convene the meeting.

H. Hill and Cowling showed cause against the rule, which was supported by *Keating and Bros.*

The Court said, that as the chapelwardens of the district were not the persons to convene the meeting and to give the notices, what had been done was void, and the act had not been properly adopted. The 66th section, which gave a right of appeal, only applied where the act had been lawfully adopted, and the objection could now be taken. The rule would therefore be discharged, but without costs.

Regina v. Brydges and others. May 8, 1854.

QUO WARRANTO. — WHEN IMPROPERLY MOVED. — COSTS. — ATTORNEY.

A rule was discharged, with costs to be paid by the attorney, for a quo warranto on a district burial board, on the affidavit of the relator that he had signed the affidavit on which the rule was obtained without having read it, and that he objected to be a party to the proceedings, and was a pauper, and the Court refused to allow another relator to be substituted.

A RULE nisi for a quo warranto had been granted in this case on the defendants, who were the members of a burial board at Melcombe Regis.

Sir F. Thesiger showed cause on an affidavit of the relator that he had signed the affidavit on which the rule had been granted without knowing its contents, and that he did not wish to be a party to the proceedings, and was a pauper.

Pashley submitted that a new relator should be substituted.

The Court, however, refused to permit such substitution, and discharged the rule with costs to be paid by the attorney who prepared the affidavit.

Herring v. Tomlin. May 8, 1854.

ACTION FOR BREACH OF CONTRACT. — ASSESSMENT OF DAMAGES. — EVIDENCE OF WITHDRAWAL OF PLEA OF FRAUD.

On the assessment of damages before the Secondary, in an action for damages for breach of an agreement by the defendant, to take the plaintiff into partnership, evidence was adduced of the withdrawal by consent, of a plea of fraud: Held, that it was inadmissible, and a new trial was ordered.

It appeared in this action to recover damages for the breach of an agreement whereby the defendant had agreed to take the plaintiff in partnership, as a ship and insurance broker, that on the assessment of damages before the Secondary evidence had been admitted of the withdrawal by consent of a plea of fraud. A rule nisi had therefore been obtained for a new trial, on the ground of the improper admission of this evidence, whereby the amount of damages given was greater.

Wordsworth showed cause; *H. S. Giffard* in support.

The Court said, the question was what loss the plaintiff had sustained by the breach of contract, and these could not be affected by the plea of fraud, and the admission of the evidence of its having been pleaded would tend to inflame the damages. The rule would therefore be made absolute.

Regina v. Justices of Kent. May 8, 1854.

ORDER OF REMOVAL. — SERVICE BY POST. — WHEN ARRIVING ON SUNDAY.

The order for the removal of a pauper lunatic

was received by the post in the appellant parish on a Sunday morning: Held, that the service was good, and was as of Monday morning.

THIS was a motion for a rule on the defendants to show cause why they refused to hear an appeal against an order for the removal of a pauper lunatic from Greenwich to Kimbolton. It appeared that the order was received in Kimbolton by post on a Sunday morning, and the question was, whether the service was good. By the 29 Chas. 2, c. 7, s. 6, it is enacted, that "no person or persons upon the Lord's Day shall serve or execute, or cause to be served or executed, any writ, process, warrant, order, judgment, or decree (except in cases of treason, felony, or breach of the peace); but that the service of every such writ, process, warrant, order, judgment, or decree shall be void, to all intents and purposes whatsoever." (See *Colvill*, app., v. *Lewis*, resp., 2 Com. B. 60).

Deedes in support.

The Court said, that the service was good as of the Monday morning.

Esparte Ainger. May 8, 1854.

ARTICLED CLERK. — DISCHARGE OF ARTICLES ON ATTORNEY ABSCONDING.

An application was granted to discharge an articulated clerk from his articles, where the attorney had absconded and gone to America.

THIS was an application to discharge an articulated clerk from the articles he had entered into with an attorney, who had since absconded and gone to America.

Keane in support.

The Court granted the application.¹

Regina v. Registrar of the Pharmaceutical Society. May 9, 1854.

RETURN TO MANDAMUS. — TRIAL BY COMMON JURY, WHERE QUESTION COMPLICATED.

A motion was refused for a rule nisi to try by a common jury the return to a writ of mandamus on the registrar of the Pharmaceutical Society to make out a register of the members of the society under the 15 & 16 Vict. c. 56, where the question at issue was a complicated one.

THIS was a motion for a rule nisi to try by a common jury the return to this writ of mandamus on the defendant to make out a register of the members of the society under the 15 & 16 Vict. c. 56 (reported *ante*, vol. 47, p. 284).

H. Lloyd in support, on the ground that the question at issue was merely whether certain

¹ See *Esparte Wilkinson*, 9 Dowl. P. C. 320; *Esparte Carnley*, 2 Dowl. N. S. 945; 12 Law J., N. S. Q. B. 98; *Esparte Hawke*, 45 Leg. Obs. 283; *Anon.* 2 Chit. 62; 1 Chit. 558, n.

parties were entitled to be on the register without having undergone an examination.

The Court said, that the question was a complicated one, and the rule was accordingly refused.

Dawson v. Williams, clerk. May 9, 1854.

APPLICATION TO SET ASIDE WRIT OF SEQUESTRATION AS IMPROPERLY ISSUED.—RULE ENLARGED.

*A plaintiff who had recovered judgment against a defendant issued a *levari facias* and obtained a writ of sequestration against his benefice, but it was directed not to be executed unless it should be necessary to secure the plaintiff's priority. On the defendant's insolvency and appointment of a provisional assignee, it was discovered a prior sequestration had been issued by the plaintiff. A rule to set it aside was enlarged in order that the assignee might, on the return thereto of nulla bona, try the question.*

THIS was an application to set aside a sequestration issued by the plaintiff on the defendant's benefice. It appeared that he had issued a *levari facias*, and that the writ of sequestration which issued thereon had been directed not to be executed, except it should be necessary for the purpose of maintaining his priority of claim in enforcing his judgment. Upon the defendant's afterwards becoming insolvent and a provisional assignee being appointed, it was however discovered that the plaintiff had issued a prior sequestration, which was now sought to be set aside.

Byles, S. L., and Lush showed cause against the rule, which was supported by *Sir F. Thesiger* and *J. Addison*; *Badeley* for the bishop.

The Court said, that the rule must be enlarged in order to enable the provisional assignee to bring an action upon the return of *nulla bona*, to try the question at issue.

Dunn v. Coutts. May 9, 1854.

SETTING ASIDE PROCEEDINGS FOR IRREGULARITY.—LACHES.—HABEAS CORPUS.

Where a lapse of upwards of 12 months had taken place before an application to set aside proceedings for an irregularity: Held, too late, notwithstanding the applicant had been in prison for 10 months under the order of the Insolvent Debtors' Court, and had been refused a habeas corpus to appear in person.

Held, also, that a habeas corpus for a suitor to appear in person to conduct proceedings will only be granted under special circumstances.

THIS was a motion for a rule *nisi* on the defendant to set aside the judgment and all subsequent proceedings on the ground of irregularity. It appeared that upon judgment in the action having been given for the defendant, execution was issued for the costs, and the

plaintiff was arrested on the allocatur which was afterwards given. An application for a *habeas corpus* in order that he might move in person to be discharged had been refused, and on his taking the benefit of the Insolvent Debtors' Act, an order was made for his discharge at the end of 10 calendar months.

The plaintiff in person in support.

The Court said, that even if the proceedings were irregular, the application being after the lapse of 12 months, was too late. The practice of parties suing in person applying for writs of *habeas corpus* in order to conduct their own litigation had become an extensive evil, and would not be allowed, except under special circumstances. Such parties must get others to conduct their case, and if not they must take the consequences. The rule would therefore be refused.

Herman v. Shelby. May 9, 1854.

COUNTY COURT.—PROHIBITION.—EXECUTION ISSUED AFTER PROTECTION ORDER.

A plaintiff had obtained judgment in the S. County Court against the defendant, who afterwards took the benefit of the Insolvent Debtors' Act, but the plaintiff notwithstanding issued execution and transferred the same to the D. County Court: A rule was refused for a prohibition against the Judge of the D. County Court against further proceeding in the matter; and held that the proper remedy was by action or application to the S. County Court.

THIS was a motion for a rule *nisi* for a prohibition against the Judge of the Dartford County Court against further proceeding in this plaint. It appeared that the plaintiff had obtained judgment in 1851 in the Southwark County Court against the defendant, who soon afterwards obtained a final order for protection from the Insolvent Debtors' Court, but that the plaintiff had notwithstanding issued execution and transferred the same to the Dartford County Court, under which the sheriff had levied on the defendant's goods.

Duncan in support.

The Court said, that even if the execution were wrongful, a prohibition was not the proper remedy, which must be by action or by an application to the Court from which it had issued. The motion would therefore be refused.

Queen's Bench Practice Court.

(Coram Coleridge, J.)

Regina v. Robinson. May 8, 1854.

RULE TO ADMIT TO BAIL BANKRUPT COMMITTED FOR EMBEZZLEMENT.

The Court refused a rule to admit a defendant to bail who was a bankrupt, and had been committed under the 12 & 13 Vict. c. 106. s. 251, for trial for embezzlement, with intent to defraud his creditors.

THIS was a rule *nisi* to admit the defendant

to-fall, who had been committed for trial under the 12 & 13 Vict. c. 106, s. 251, for embezzlement, with intent to defraud his creditors. It appeared that on being adjudged a bankrupt by the Commissioner of the Leeds District, he had been opposed, on the ground that he had fraudulently concealed his assets, and had been committed for trial on the same being discovered, to the amount of about 300*l.* in value.

Huddleston showed cause against the rule, which was supported by Milward.

The Court said, that as the charge was one of the gravest pecuniary offences, and the defendant had almost confessed the offence, and the punishment was a most severe one, the rule must be discharged.

Court of Exchequer.

Watts v. Rees. May 8, 1854.

STATUTE OF SET-OFF.—ACTION BY PLAINTIFF AS ADMINISTRATOR.—SET-OFF OF DEBT FROM INTESTATE.

Quere, whether to an action by the administrator of an intestate to recover money payable by the defendant to the plaintiff for money of the intestate had and received by him to the plaintiff's use as such administrator, and for interest, and for money found to be due to the plaintiff as administrator on an account stated between the plaintiff and the defendant, a plea can be pleaded of set-off for money lent by the defendant to the intestate in his lifetime, and for work done for the intestate, and on an account stated between him and the intestate.

THIS was an action by the administrator of an intestate to recover money payable by the defendant to the plaintiff for money of the intestate had and received by him to the plaintiff's use as such administrator, and for interest, and for money found to be due to the plaintiff as administrator on an account stated between the plaintiff and the defendant.

The case now came on on a demurrer to the defendant's plea of set-off for money lent by him to the intestate in his lifetime, and for work done for the intestate and on an account stated between him and the intestate.

Henniker for the plaintiff, in support, referred to the 2 Geo. 2, c. 22, s. 13.¹

¹ Which enacts, that "if any such bankrupt shall remove, conceal, or embezzle any part of such estate, to the value of 10*l.* or upwards, or any books of account, papers, or writings relating thereto, with intent to defraud his creditors:—every such bankrupt shall be deemed guilty of felony, and be liable to transportation for life," &c.

² Which enacts, that "where there are mutual debts between the plaintiff and defendant, or if either party sue or be sued as executor or administrator, where there are mutual debts between the testator or intestate and either party, one debt may be set against the other,

Baillif, for the defendant, cited *Morrell v. Thelluson*, 31 Law J., N. S., Q. B. 410.

The Court said, that the case cited was in direct opposition to the Statute of Set-off, and it did not appear that the prior case of *Schofield v. Corbett*, 5 N. & M. 527; 11 Q. B. 779, had been cited on the arguments of that case. Under these circumstances, there would be judgment for the plaintiff, leaving the defendant to bring a writ of error.

Kington v. London and North Western Railway Company. May 9, 1854.

ARREST ON COUNTY COURT JUDGMENT SUMMONS OF PLAINTIFF RETURNING FROM GIVING EVIDENCE AT NISI PRIUS.

Quere, whether the order of commitment of a party for non-attendance on a judgment summons, under the 9 & 10 Vict. c. 95, s. 198, is of a civil or criminal nature.

But under the circumstances a rule was made absolute for the discharge of a person taken in custody thereunder on his return from the Nisi Prius Court, where he appeared as a necessary witness for himself as plaintiff in an action, and held, that the application was properly made in this Court where the cause was, and not to the Nisi Prius Judge.

THIS was a rule nisi granted for the discharge of the plaintiff from arrest, upon the ground of privilege. It appeared that the plaintiff was a necessary witness on his own behalf in this action, at the last Liverpool Assizes, and that he had accordingly attended, notwithstanding he was summoned before the County Court on a judgment summons. A warrant of commitment was thereupon issued from the County Court, and the plaintiff was arrested after he had left the Nisi Prius Court, while about to enter his house.

Milward showed cause against the rule, on the ground that the application should have been made to the Nisi Prius Judge of Assize, and that the warrant was of a criminal nature, referring to the 9 & 10 Vict. c. 95, s. 98.

Watson in support.

The Court said, that the application was properly made here in which the cause was, and that although it was doubtful whether the process in question was not one under which the plaintiff might have been arrested at any place, the rule would, under all the circumstances, be absolute for his discharge, but without costs.

and such matter may be given in evidence upon the general issue, or pleaded in bar, as the nature of the case shall require, so as at the time of his pleading the general issue, where any such debt of the plaintiff, his testator or intestate, is intended to be insisted on in evidence, notice shall be given of the particular sums or debt so intended to be insisted on, and upon what account it became due, or otherwise such matter shall not be allowed in evidence upon such general issue."

The Legal Observer,

AND

SOLICITORS' JOURNAL

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SATURDAY, MAY 20, 1854.  
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REPORT OF THE BANKRUPTCY COMMISSIONERS.

PROPOSED AMENDMENTS.

THE Commissioners' Report, dated the 10th April, 1854, has just been printed, with the voluminous Minutes of Evidence, Answers to the Commissioners' Circular of Questions, and various Accounts, Tables, and Miscellaneous Papers. The Report is signed by the Right Honourable Spencer H. Walpole, Sir George Rose, Mr. Swanton, Q. C., Mr. M. D. Hill, Q. C., Mr. Bacon, Q. C., Mr. Commissioner Holroyd, Mr. Edward Cooke, Barrister-at-Law, and Mr. G. Carr Glyn, the Banker. The Report is arranged under seven different heads, viz. :—

"1st, The cause of the diminution of the fees and funds now by law applicable to the payment of the expenses of the Court of Bankruptcy.

"2ndly. Since it appears that these funds are insufficient to discharge the expenses, whether such deficiency is likely to be permanent.

"3rdly. Having regard to the quantity of business transacted by the Courts of Bankruptcy, whether any and what reduction of the establishments of those Courts, either in London or the country, can safely and properly be made, or whether any and what other measures can be adopted for meeting their expenses.

"4thly. Whether any and what more effectual means can be adopted for obtaining a more efficient check on the accounts of the official assignees, and for preventing the misapplication by them of the funds coming to their hands.

"5thly. Whether the alteration of the Bankrupt Law made by the Act of 1849, establishing class certificates, has or has not been productive of benefit.

"6thly. Whether, with the view of obtaining uniformity of practice as to the granting of such certificates, or for any other reason, any

and what alteration of the present enactment would be desirable; and

"7thly. Whether in any and what other particulars the Bankrupt Law, as it now exists under the Act of 1849, requires amendment."

The Report is too long for immediate insertion in our columns, and we shall therefore, in the first instance, select those portions of it which are the most likely to interest our readers. Looking to the diminution of the Court fees and funds, we may here observe, that from 1843 to 1849 there was a surplus of 11,285*l.* 10*s.* 2*d.*, but during the last 4 years there has been an annual deficiency, amounting in that period to 51,706*l.* 2*s.* 5*d.* The causes of the diminution of business are thus set forth in the Report :—

"First, the general prosperity of trade and commerce which has recently prevailed.

"Secondly, a better and more prudent system of trading among the smaller traders, which some witnesses attribute partly to the stricter provisions of the Bankrupt Law Consolidation Act, and partly to the operation of the County Courts in shortening the terms of credit, and facilitating the recovery of debts.

"Thirdly, the effect of the proviso in the 93rd section of the Consolidation Act, which precludes a trader from obtaining adjudication of bankruptcy against himself, unless he can show that his available estate is sufficient to pay his creditors at least 5*s.* in the pound clear of all charges.

"Fourthly, the great expensiveness of the system in the fees and per centages charged against the estate, which induces all parties to prefer a settlement out of Court by composition or other arrangement, especially as greater validity has been given to such settlements by the recent Statute.

"Fifthly, the severity of the penal clauses which drives many debtors to make such settlements with the assistance of friends, and disinclines many creditors from proceeding in bankruptcy.

"And sixthly, an unwillingness on the part of creditors to encounter the publicity and formality of proceeding, which operate, to a certain extent, as a partial exposure of their affairs, and also as an impediment to the adjustment of the claims of themselves and others, in the way which they conceive to be most conducive to their own interests."

The Commissioners point out the effect of the proviso in the 93rd section of the Bankrupt Law Consolidation Act, 1849, by which a trader cannot obtain an adjudication against himself unless he can pay 5s. in the pound. The Commissioners recommend that this restriction should be altered, and relief in bankruptcy granted if the trader can show available assets to the amount of 150*l.*, so that the expenses of the Court may be paid.

It is also recommended that the fees, stamps, and per centages should be revised.

The Commissioners also recommend the reduction of the establishment and relieving the creditors of the charge for compensations, and by some alterations of the Law and Practice, to which we shall presently advert, by which means the income of the Court may cover its expenditure, and the fees now pressing on the suitor be greatly reduced.

The reductions in the establishment are thus stated:—

One London Commissioner, Registrar and Usher	£.
Five Country Commissioners, Registrars, and Usbers	3,100
Three Registrars' salaries in London to 800 <i>l.</i>	13,400
Five in the country from 800 <i>l.</i> to 600 <i>l.</i>	600
Five in the country from 800 <i>l.</i> to 600 <i>l.</i>	1,000
	<hr/>
	£18,100

With regard to the *Official Assignees*, the following Rules are, in the first place, recommended to prevent the recurrence of the large defalcations that have taken place:—

"1. That the course of proceeding now in use on the occasion of a final dividend, be followed on all occasions of a dividend as well as an audit, save that the time for the official assignee sending the account be four instead of 14 days before the day advertised or appointed, and that a copy of the account be furnished to the bankrupt also.

"2. That if a dividend be not made within any year after the date of his bankruptcy, an account be furnished in like manner by the official assignee within 10 days after the expiration of every such year until the estate shall be finally wound up and closed.

"3. That it be the duty of the creditors' as-

signee in all cases to examine the account with the official assignee's books, and with the bankrupt's balance-sheet, and that the bankrupt and any person having taken a copy of the account be at liberty at all seasonable times to do the like.

"4. That the creditors' assignee do certify his examination and approval of the account, or his objections to it, and that his certificate, with the observations in writing of the bankrupt, or of any person having taken a copy of the account, be exhibited to the Court at the audit.

"5. That where the account is delivered under rule 2, the creditors' assignee do make his certificate upon it within a month, and that if objections are made, an audit be held, in the discretion of the Commissioner, with power to him to award costs personally, to or against any party.

"In the second place, we are of opinion that the provisions of the Irish Bankruptcy Act, with reference to the security required to be given by and for the official assignee, are preferable to those which are contained in the rules and orders made under the English Act, particularly in permitting the security of any guarantee society established by charter or Act of Parliament to be accepted. The permanent solvency of such a society is much more certain than the continuing solvency of individual obligors. The Statute should also authorise the bond, where the security is given in that form, to be taken to the chief registrar and his successors in office, instead of to him and his personal representatives.

"In the third place, to ensure the quarterly audit, and to give greater force to these regulations, we think that these provisions should be introduced in the Act of Parliament, together with the order above adverted to."

Reserving for a separate article the subject of the "*Classification of Certificates*," and the severity of the penal provisions of the Statute, the refusal of protection, the suspension of the certificate, and the power of judgment creditors, we proceed to the other amendments recommended in the Report. They are as follow:—

"*Registration of Bills of Sale.*—It is of great importance to provide a check upon bills of sale and similar instruments, which are very frequently set up to defeat the claims of creditors under a bankruptcy. A check of this kind may be properly obtained by providing for the registration of such instruments, within a certain period after their execution, and at least two months before the bankruptcy, and by giving to registered instruments complete protection against acts of bankruptcy subsequent to their registration, notwithstanding that the goods or chattels comprised in them may have been, with the consent of the true owner, in the possession, order, or disposition of the bankrupt as reputed owner at the time of his bankruptcy.

"Limitation of time for disputing Adjudication.—By the Act of 1849 (section 233), if a person adjudged bankrupt, who was within the United Kingdom at the date of the adjudication, does not within 21 days after the advertisement of the bankruptcy in the *Gazette*, commence some proceeding to dispute or annul the adjudication, and prosecute it with due diligence and with effect, the *Gazette* is made conclusive evidence in all cases, as against the person, of the fact of his having become a bankrupt. Under the Bankruptcy Act for Ireland, on the other hand, the corresponding period is two months. With the view as well of relaxing the stringency of the enactment, as of assimilating to this extent the laws of the two countries, we recommend that the period of two months be substituted in the English statute for that of 21 days.

"Disposition of the Bankrupt's Estate.—It is desirable that the law should afford the utmost facilities for the winding up of a bankrupt's affairs, with all convenient speed, but without a premature or forced sale of his estate, and that at the same time the Court should have full power to dispose of any outstanding debts or property due or belonging to the estate, at any stage of the proceedings. This may be accomplished by the existing provisions (sections 150 and 188) being extended and made more specific, and by giving to the assignees, subject to the direction of the Court, further discretionary powers touching both the sale or disposition, and the postponement of the sale, of the property, of the bankrupt, and the raising of money where it may be deemed expedient by way of mortgage, so that the debts of the bankrupt may be discharged in such manner as may be most consistent with the rights of the creditors and with the interest of the bankrupt in the surplus.

"Declarations of Insolvency.—Delay and expenses would be lessened by a provision for a trader's declaration of insolvency being filed in the District Court where the bankruptcy is to be prosecuted, under proper arrangements for the transmission of copies of the declarations to the Chief Registrar's office in London.

"Possession by Messenger.—It is not desirable that the messenger should keep possession of the bankrupt's effects in all cases without distinction. We therefore recommend that as the messenger is now in this respect, subsequently to the choice of assignees, under the control of the creditors' assignee, so previously to the choice, he should be to the like extent under the control of the official assignee, subject to the directions of the Court.

"Distress for Rent after Bankruptcy.—We think that a distress for rent made and levied after an act of bankruptcy, should be available for six months' rent only, and not for one year's rent as now; the rights of the landlord to prove for the residue, if any, being preserved.

"Costs.—A new table of costs for the regulation of the charges of Solicitors and others is required, especially in the country districts,

and with reference to the new kinds of business brought into the Court. Our attention has been particularly drawn by the evidence to the high charges for affidavits of proof of debts, and payments for unnecessary office copies: these and many other charges should be carefully revised.

"Bills of Auctioneers, &c.—The statutory power of taxing the bills of auctioneers and accountants, which was taken away (it would seem inadvertently) by the Act of 1849, should be restored to the Court.

"Parliamentary Returns.—The returns of the financial and other statistics relating to the Court now required to be made directly to Parliament, together with such other returns as may appear desirable, should in future be made to the Chief Registrar, whose duty it should be to make an annual report to the Lord Chancellor, stating the result of those returns, without giving, unless required, the more minute details; and then this report should be laid before Parliament.

"With these exceptions, we do not think it expedient to enter more minutely into the particulars in which the law as now existing under the Act of 1849 may be susceptible of amendment, but we recommend that the provisions of the Statute be carefully revised, with especial reference to the judicial decisions which have been given upon the construction of its various parts.

"The changes of language and substance which such a revision would show to be desirable, and those which our other recommendations involve, will, we apprehend, be so numerous and extensive that it may be a question whether, notwithstanding its recent date, the consolidating Statute should not be repealed and be re-enacted with the alterations. If this course be deemed expedient, the opportunity should be taken of incorporating such of the provisions of former Acts as still remain in force, and those of the subsequent Statutes relating to the same subject.

"Appeal.—The subject of appeal has been brought before us; and the mode of appeal as constituted at present has been objected to on two grounds;—first, on the ground that it is so expensive as to amount in some cases to a denial of justice; and, secondly, on the ground that new facts and new evidence may be adduced, and consequently the appeal becomes an original hearing before another tribunal.

"The costs of an appeal are stated to be seldom less than 50*l.* or 60*l.* on each side; and the solicitors, we are informed, will not commence one on the part of the bankrupt unless they are provided with that sum. But that sum is so large to a man who is stripped of all his property, that the bankrupt or his friends, however much they may consider that the Commissioner's decision has been erroneous, can rarely command or venture to hazard it. The creditors also are so unwilling to diminish still further the available assets, that they submit to what they conceive to be an injustice, rather than incur the additional expense conse-

quantum on an appeal, which may be heard on new evidence.

"The state of the law and practice in appeals cannot, under such circumstances, be deemed satisfactory. But the importance of preserving to the Superior Courts a supervision and control over the decisions of the Inferior Courts, in order that the law in its principles and practice may flow in an uniform and continuous channel from the fountain head, is so great and so obvious, that we cannot see any practicable mode of removing the objections above adverted to, without introducing other inconveniences, which would more than counterbalance any advantages to be derived from the change. At the same time, it would be desirable that regulations should be made for confining the costs within reasonable limits.

"*Deceased Traders' Estates.*—In addition to these improvements in the existing law, the extension of the jurisdiction of the Court of Bankruptcy to the administration of deceased traders' estates has also been brought under our notice. Clauses to that effect were introduced into the Bill presented by Lord St. Leonards to the House of Lords in the course of last Session, and we can see no reason why the administration of a deceased trader's estate, which is insolvent at his death, should not be left to the same tribunal as that which would have administered his estate when living, under such arrangements for the due distribution of his assets as Lord St. Leonards has proposed.

"*Auxiliary Jurisdiction.*—The Bill of Lord St. Leonards has also proposed, that the District Courts of Bankruptcy should become auxiliary to the Court of Chancery, in taking accounts and prosecuting inquiries, in administering oaths, in examining witnesses, in taking down evidence, and in other matters of that description.

"We think the proposition is well worth attending to, not only on account of the immediate advantage which is likely to result from it, but because it will tend to bring the Local and Superior Courts into mutual co-operation, by making the one ancillary to the other."

On the alteration proposed by the Bill of Lord Brougham for the Abolition of the District Courts of Bankruptcy and the transfer of their jurisdiction to the *County Courts*, the Commissioners say:—

"Independently altogether of other objections, we cannot shut out from the consideration of this question the serious evils, in point of expense, which constant changes in the administration of justice are sure to occasion. When the former system of bankruptcy was altered, a high charge for compensation to those whose offices were abolished immediately arose, and the suitor of the present day is taxed for the payment of them, to an amount which, notwithstanding the lapse of time, is still upwards of 20,000*l.* a year. If the District Courts of Bankruptcy were now to be abolished, there would probably be new charges for new com-

pensations of little less than 40,000*l.* a year; and either the country or else the suitor would have to bear them. Nothing but an obvious improvement of the law, of corresponding advantage, and of certain continuance, would warrant a change which leads to such results; and therefore, unless this objection could be remedied, or an equivalent benefit could clearly be obtained, we should doubt the propriety of such an alteration.

"But this is by no means the only objection to it. There is a broad distinction between the County Courts and the Courts of Bankruptcy, which constitutes a serious obstacle to the combination of their functions. In its main features a Court of Bankruptcy is a Court of administration. It investigates the affairs of the bankrupt, scrutinizes the claims upon his estate, reduces his assets into possession, and divides them among his creditors. The progress of a bankruptcy through the Court is thus necessarily divided into various stages, each of which is often extended through a considerable portion of time. Intermediate applications have also to be heard and disposed of; and instances are by no means rare in which many months or even years are rightly occupied in completely winding up the bankrupt's affairs. Hence it follows that a minute record of the proceedings, together with the books and papers relating to the estate, must be kept, and always at hand, for the purpose of constant and ready reference;—sometimes too, they are required on sudden emergencies, where delay would be injurious to the estate, or cause impediments to the course of justice. For these reasons it is essential to the administration of matters in bankruptcy that the Court should be stationary, and open from day to day.

"For the same reasons the Court has attached to it an officer who is chosen for his experience in commercial affairs, and his knowledge of finance and accounts. This officer, the official assignee, is employed in the investigation of the bankrupt's books and papers, and of his affairs generally, with a view of securing to his creditors every portion of the estate, and of enabling them to resist unfounded claims. In the course of these labours he becomes acquainted with the conduct of the bankrupt, and the character of the bankruptcy; and he is often able to furnish the Commissioner with trustworthy information with reference to those two very important stages, the last examination and the allowance of the certificate. These are duties which cannot be properly and efficiently discharged, except in a fixed office; and they may be advantageously executed in one locality, as the centre of an extensive district.

"The County Courts, on the other hand, are Courts established for very different purposes; nor are they susceptible of such changes as would make them suitable for the administration of bankruptcies without an injurious interference with their primary functions. While the characteristic of a Court of Bankruptcy is administration, that of a County

Court is the exercise of the contentious jurisdiction. The cases which come before the latter are, for the most part, simple and speedily disposed of. They are of such a nature that, to save expense and prevent delay, they should be heard and decided as near as may be to the immediate localities of the litigant parties. For these reasons, the County Courts are properly made ambulatory, while for the reasons above adverted to, a Court of Bankruptcy ought to be stationary. In cases of the former class, the residence of the debtor is the fittest place where the Court should hold its sittings. In the winding up, however, of commercial transaction the reverse is the fact; since the principal trade creditors usually reside in or near London, or some one or other of the great commercial or manufacturing towns.

"Again: the questions to be decided by the County Courts are seldom such as require a long and minute investigation. The matter to be disposed of is usually nothing more than the solution of the question whether or not a debt is due. In connexion with such a question the services of an experienced financier would be wholly out of place; and therefore the duties of the official assignee, or of any officer of a similar character, would be solely confined to such bankruptcy business as might arise in the district of a single County Court.

But this, in amount, would be so trifling, that he could not obtain a sufficient remuneration without throwing an excessive pecuniary burden either on the suitors or on the country. In the result, therefore, we fear, the office of official assignee, which has been described as the corner-stone of the present bankruptcy system, could be no longer maintained; and the pernicious local and personal influences, together with the other evils which are necessarily incident to a distribution of the business in bankruptcy among a large number of distinct and independent Courts, and which the District Courts established in 1842 were specially designed to cure, would probably be again introduced.

"It must also be borne in mind, that while the County Courts have a jurisdiction which is limited in point of amount, and confined to particular classes of subjects, the jurisdiction of the District Courts of Bankruptcy is entirely unlimited, and the range of questions decided in them covers almost the whole field both of law and equity.

"On our present information, therefore, we should be inclined to preserve, as a distinct jurisdiction, the District Courts of Bankruptcy; especially as we fear that the union of that jurisdiction with the jurisdiction of the County Courts might be detrimental to both. At all events, we cannot recommend such an alteration as this, if it is to saddle the country or the suitor with very heavy compensations."

REMUNERATION OF SOLICITORS.

GRADUATED PER CENTAGE.

WE, some weeks back, submitted to our readers a scale of conveyancing charges adapted to a system of graduated per centage, and since then Lord Brougham's measure, empowering, and indeed requiring, the Taxing Master to estimate, not the length of a deed only, but the skill and labour employed, and the responsibility incurred in its preparation, has been introduced into the House of Lords, and we shall therefore offer a few remarks on the two systems now before the Profession. The obvious objection to Lord Brougham's measure is, that it affords no fixed principle to guide the Taxing Master in determining what the amount of remuneration ought to be, but leaves it entirely in his discretion to fix such a sum as he thinks proper in each particular case, which cannot fail to produce the greatest uncertainty in the charges, and will not, we think, prove at all satisfactory to the Profession generally.

Let us consider the principles which ought to guide the officer in forming such an estimate. He ought to consider, not only the skill and labour employed in the particular matter before him, but the general status of the Profession; the expenses which they incur, and the income with reference to other Professions which a solicitor may fairly be expected to earn. Now, however competent an officer may be, these matters are far too delicate for him to decide upon; besides the amount of remuneration ought not to be fixed with reference to an isolated business, but should have reference to one general system of charging, and it seems clear that as long as the solicitor's charges are subject to taxation there must be some rules to guide him in making out his charges, and the officer in taxing them.

We have already indicated what we consider the test ought to be, namely, a pecuniary test applied by way of a graduated per centage in all cases of investments of money, and a modified system of per centage in other cases, somewhat after the Scotch system. Such a system may not be so strictly correct as a system of payment according to the skill and labour employed, but is, we think, far more practical, and we believe will be found, on the whole, to be the best adapted to meet the views of the Profession and the Public.

It is one of the simplest that can be devised. The responsibility incurred by the

solicitor is, of course, greater on a large than on a small transaction, and, as a general rule, the trouble will be greater also. It is the test adopted by all other professions and callings connected with the management or sale of property, and, what is more important, it is the only test which the Public at all regard. How often have we heard clients complain of the amount of charges with reference to the smallness of a purchase, when they would willingly pay double the amount if the purchase-money was larger. In fact, the charges are now, to a great extent, regulated by the amount of the purchase-money, and in small purchases are usually curtailed by conditions of sale so as to bring them within moderate limits, and if it were not so, they would in many cases exceed the purchase-money. Such being the case, with a scale fixing a fair average charge on the smaller sums, and a moderate per centage upon the higher sums, the Profession would gain by it and the Public be better satisfied. The scale of charges suggested by us may be too high or too low, but that a scale can be framed which will satisfy the Profession, we make no doubt; and, if thought advisable, a discretionary power might be vested in the Taxing Master to allow a further sum in difficult cases where a per centage charge would be manifestly inadequate.

We believe that the present system of charging is not adapted to the altered state of the law, and that the whole system requires to be thoroughly revised, and surely there is ingenuity enough amongst the Profession to frame a practical scheme which will satisfy the requirements of all parties. If we may venture to offer a suggestion on the subject, we should say that the Council of the Law Institution should either prepare a scale themselves, or nominate a certain number of solicitors to do so, which, after being approved by the Taxing Masters, might be published as an official precedent with the sanction of the Lord Chancellor; and if a little more direct liberality is shown in fixing the scale of payment, we feel certain that a much greater amount of indirect expense will be saved to the Public.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

INCOME TAX, 17 VICT. c. 10.

THIS is "An Act for granting to her Majesty additional Duties on Profits arising from Property, Professions, Trades, and Offices," and received the Royal Assent on 12th May, 1854.

1. There shall be charged, raised, levied, collected, and paid, unto and for the use of her Majesty, her heirs and successors, for the year 1854, for and in respect of all property, profits, and gains chargeable in or for the said year with the rates and duties granted by the Act passed in the last Session of Parliament, chap. 34, additional rates and duties amounting to one moiety of the whole of the duties which by virtue of the said Act shall be charged and assessed or shall become payable, under any contract of composition or otherwise, in respect of such property, profits, and gains respectively for the said year; and the whole amount of the said additional duties shall be collected and paid with and over and above the first moiety of the duties assessed or charged by virtue of the said Act for the year aforesaid.

2. The said duties hereby granted shall be charged, raised, levied, and collected under the regulations and provisions of the said Act passed in the last Session of Parliament, and of the several Acts therein mentioned or referred to; and all powers, authorities, rules, regulations, penalties, clauses, matters, and things contained in or enacted by the said several Acts, and in force with respect to the duties granted by the said first-mentioned Act, shall (so far as the same are or may be applicable consistently with the express provisions of this Act) respectively be duly observed, applied, and put in execution for charging, raising, levying, collecting, receiving, accounting for, and securing the said duties hereby granted, and otherwise relating thereto.

NOTICES OF NEW BOOKS.

The Law of Turnpike Roads: comprising the whole of the General Acts now in force; the recent Acts as to the Union of Trusts, for facilitating arrangements with their Creditors, as to the interference by Railways with Roads, their non-repair, and enforcing Contributions from Parishes, &c., &c.: practically arranged, with Cases, copious Notes, all the necessary Forms, and an elaborate Index, &c., &c. By GEORGE C. OKE, Author of "The Magisterial Synopsis" and "The Magisterial Formulist," &c. London: Butterworths. 1854. Pp. 488.

THE railways have not yet superseded the turnpike roads, nor are they ever likely to do so, especially with regard to cross-roads connecting the great iron lines of communication with each other. It is fitting, therefore, that the Profession should keep up their knowledge of the Law of Turnpike Roads. This is a branch of our statutory enactments which appears to have been long neglected by text-writers and editors of new Statutes. We are not aware

of any publication on the subject since the works of Mr. Woolrych and Mr. Bateman, in 1836, eighteen years ago. We presume that these learned writers have looked with disdain upon the remaining highways and byeways, and left the study of the new Acts in that department of Law to the legal advisers of the several turnpike trusts. An accurate knowledge of the present state of the Law relating to Turnpike Roads is, however, often required by other solicitors than the clerks to trustees of roads, and therefore Mr. Oke, who has already distinguished himself in the composition of other useful works, has done well and wisely in collecting and arranging all the former Acts now in force, with the subsequent Road Acts, and the Forms necessary for carrying the Acts into effect. He has accomplished his task with much care and skill, and the method he has adopted in arranging and classifying his materials is very satisfactory. His tabular list of, and explanatory notes on, the principal Turnpike Acts, their repeal or amendment, and the provisions which remain in force, are very valuable.

The principal alterations which have been made in the law during the period alluded to, are—the Acts for the Union of Turnpike Trusts and Districts for more Economical Management;—the Acts providing for the setting apart of a certain sum yearly for a sinking fund to discharge Mortgage Debts on the Tolls;—the Act for facilitating arrangements with the Creditors of Insolvent Trusts, by empowering the Home Secretary, with the consent of a certain amount of creditors, to reduce the rate of, or extinguish the interest on Mortgage Debts;—the Act authorising the application of a portion of the Highway Rate to the repairs of Turnpike Roads;—the enactments in the Railways' Clauses' Consolidation and other Acts relating to the interference by railways with such roads;—many extensions of the exemptions from tolls, as well as a variety of amendments of the general Laws as to Turnpike Roads in Statutes not directly applicable to that subject.

All these provisions and the earlier general Turnpike Road Acts, omitting the repealed and repealing clauses, are contained in the present work, with copious notes, the decisions down to the latest period, and a large body of necessary forms.

The work is very conveniently arranged to those who require to consult it: instead of giving the Statutes in their chronological

order, with notes at the foot of the page, the Author has divided the work into nine chapters, and classed in each, according to its subject-matter, all the enactments bearing on it, from the 3 Geo. 4 to the 17 & 18 Vict., with the necessary forms applicable to such enactments,—adding notes of all the decided cases and practical observations at the end of each section.

Mr. Oke, in his introduction, describes the progress of legislation as to turnpike roads, from the passing of the general Act in 1822 to the present time. The following are his preliminary observations:—

“That portion of the highways of the kingdom known as Turnpike Roads are made and kept in order under the authority of Local Acts of Parliament, by which the management of such roads is usually vested, for a certain term of years, in trustees or commissioners, whose powers we shall presently, in a general way, advert to. These roads do not in general fall within the operation of the Highway Act, but are regulated primarily by the Local Acts relative to each particular trust, which (though temporary) are continued by the Legislature from time to time as they are about to expire; and, in the next place, by certain general Acts, applicable (with very few exceptions) to all turnpike roads, that is, all roads maintained by tolls and placed under the management of trustees or commissioners for a limited period of time. Of these general Turnpike Acts, the 3 Geo. 4, c. 126 (1822), is the earliest now in force, it having repealed the prior enactments upon the subject; and it has itself been amended and repealed in various particulars by other general Acts, viz., the 4 Geo. 4, c. 95; 7 & 8 Geo. 4, c. 24, and 9 Geo. 4, c. 77, as well as subsequent and recent Acts.”

The several provisions contained in the Statutes are arranged under the following heads, incorporating the necessary forms therein:—

“Chap. I. The trustees and their officers, their appointment, duties, liabilities, &c.

II. As to the union of trusts.

III. As to the purchase of lands, &c., by the trustees, and property in roads, &c.

IV. As to the mortgagees and creditors of trusts.

V. As to the making and diverting roads, &c.

VI. As to repairs of roads, and contributions for same.

VII. As to tolls, their imposition, the letting, compelling payment, and the exemptions from tolls.

VIII. As to the interference of railways with roads.

IX. Offences as to turnpike roads, their penalties, &c., and mode of prosecution.”

PRINCIPLES OF EQUITY.

VOLUNTARY AND INCOMPLETE SETTLEMENTS.

IN the recent case of *Bridge v. Bridge*, 16 Beav. 320, the several decisions regarding voluntary and incomplete settlements were fully discussed and considered by the Master of the Rolls, and the effect of the several cases clearly pointed out. The general rule is thus stated by Lord Eldon in *Ellison v. Ellison*, 6 Ves. 662:—"I take the distinction to be, that if you want the assistance of the Court to constitute you a *cestui que trust*, and the instrument is voluntary, you shall not have that assistance for the purpose of constituting you *cestui que trust*. As upon a covenant to transfer stock, &c., if it rests in covenant and is purely voluntary, this Court will not execute that voluntary covenant; but if the party has completely transferred stock, &c., though it is voluntary, yet the legal conveyance being effectually made, the equitable interest will be enforced by this Court."

This rule has been recognised and acted upon in all the subsequent cases, but a considerable diversity will be found amongst them, as to what does or does not constitute the relation of trustee and *cestui que trust*.

In order to render the observations he was about to make more clear, his Honour said he would first exclude from them the consideration of all these cases, where the donor has created a debt in favour of a volunteer, as by executing a bond or a covenant to pay a sum of money. In these cases, though the obligee or the covenantee should be constituted trustee for the donee, and even if the trustee so constituted should decline to act or to enforce payment of the debt, the Court would enforce it as in the case of *Fletcher v. Fletcher*, 4 Hare, 67. In these cases the relation of trustee and *cestui que trust* was clearly complete, and the interposition of the trustee alone prevented the donee from enforcing payment of the debt at law, against the debtor or his representatives. The question before the Court depended upon those cases, where the donor professed to assign, for the benefit of the donee, some previously existing *chose in action*. His Honour said:—

"If a person possessed of stock execute a declaration of trust of that stock in favour of a volunteer, he would, I apprehend, clearly constitute himself a trustee for the volunteer, and equity would execute the trust and compel a transfer of the stock to the *cestui que*

trust. But if the same person executed an assignment of the stock in favour of the volunteer, and no transfer of the stock took place, this, I apprehend, would as clearly be considered to be no more than an *imperfect gift*, in which the donor had not done all that it was in his power to do, and the donee would get no assistance from a Court of Equity to compel a transfer of the stock.

"On the other hand, if the stock stood in the names of trustees, and the beneficial owner of it executed, in favour of a volunteer, an assignment of such stock, and if notice of that assignment were given to the trustees, who acknowledged the validity of it, and acted upon it, they would thereupon, through the act of the beneficial owner become the trustees for the volunteer, and equity would enforce the due performance of that trust in his favour.

"Up to this point, I think that no considerable difficulty arises, but to what extent an assignment of a *chose in action* by the beneficial owner, in favour of a volunteer, will be binding without such notice or such acts by the trustees, is, I think, doubtful on the authorities. They all proceed on this principle:—that the relation of trustees and *cestuis que trust* must be created between the persons who were before the assignment trustees for the assignor and the volunteer assignee. Upon this principle, as Lord Cottenham observes, Sir William Grant proceeded in the case of *Sloane v. Cadogan*, 3 Sugd. Vend. 10th ed. app. 66, which has been the subject of so much comment, as did Sir John Leach in the case of *Fortescue v. Barnett*, 3 Myl. & K. 36.

"But with respect to the acts or circumstances which will make the relation, it is not, I think, easy to reconcile all the authorities. In *Meek v. Kettlewell*, 1 Hare, 464, a most acute and careful Judge, after much consideration and a minute examination of all the authorities, decided, that where a person entitled to the contingent reversion of a fund vested in trustees on various trusts, assigned all her interest in that fund to her son-in-law, and declared the trusts of the assignment to be, in part for herself, and as to the residue to her son-in-law, but of which assignment no notice was given to the trustees, the relation of trustee and *cestui que trust* was not created, and that equity would not enforce or execute the trusts of that assignment, and this decision was affirmed on appeal by Lord Lyndhurst (1 Phill. 342). This, it is to be observed, was the assignment of a mere expectancy in a *chose in action* not communicated to the trustees, in whom the legal interest was vested.

"In *Fortescue v. Bennett*, (ubi supra,) Sir John Leach held, that the voluntary assignment of a policy of assurance on the life of the assignor, of which no notice was given to the insurance office, entitled the assignee to the benefit of the policy.

"In *Antrobus v. Smith*, 12 Ves. 39, Sir William Grant held, that an indorsement on a receipt for subscription to shares in the *Forth and Clyde Navigation*, expressing that the

donor thereby assigned them to his daughter, not being a legal assignment, conferred no interest; and the same principle was followed by Lord Cottenham in *Edwards v. Jones*, 1 M. & Cr. 286, with respect to a bond where the bond had been delivered to the assignee.

"In *Blakely v. Brady*, 2 Dr. & Walsh, 311, Lord Plunkett held, that an assignment of a note for a sum due to the donor from a third person, accompanied with the delivery of the note to the donee, and the execution of an irrevocable power of attorney, constituting the donee his attorney for the recovery of the debt, created the relation of trustee and *cestui que trust*, and enforced the execution of the trust against the legal personal representatives of the donor.

"One of the latest cases on this subject is the case of *Kekewich v. Manning*, 1 De G., M'N. & G. 176, before the Lords Justices. The case was this:—A lady entitled to the reversion in stock, subject to the life interest of her mother therein, and which stock was standing in the joint names of her mother and her daughter, assigned her interest in this stock on her marriage to trustees, in trust for herself for life, remainder to her husband for life, and after their decease, in trust for the issue of the marriage, and the issue of a niece, according to appointment; and in default of issue of the marriage, in trust for the niece of the settlor. No transfer of the fund took place, but the mother had notice of the settlement. There was no issue of the marriage, and the Court executed the trust in favour of the niece. Assuming that the deed, as regards her, was voluntary, and not supported by the marriage construction, which point, however, the Court did not decide, it is, I think, distinguishable in some respects from the other cases, where it was held that no relation of trustee and *cestui que trust* existed; but if some of the expressions to be found in the judgment of the Judges, as there reported, are to be taken according to their full force, it is difficult to reconcile them with the decision in *Beaton v. Beaton*, 12 Sim. 281, and with *Meek v. Kettlewell*. In all these cases, however, the principle in *Ellison v. Ellison*, has been adopted, and the variation has been, as to the particular circumstances, which have been considered sufficient or insufficient to make the relation which will induce this Court to act."

LAW OF ATTORNEYS AND SOLICITORS.

ACTION FOR DISOBEDIENCE TO ORDER FOR DELIVERY OF BILL OF COSTS UNDER 6 & 7 VICT. C. 73.

A JUDGE's order was made under the 6 & 7 Vict. c. 73, s. 37, on the defendant and another attorney, for the delivery within 10 days to the plaintiff, or his attorney, of a bill of costs in all common and matters wherein they

had been concerned for the plaintiff, and that they should give credit therein for all sums of money by them received of or on account of the plaintiff. No bill of costs or account was rendered, and the plaintiff brought an action for the breach of duty cast on the defendant by the Statute to deliver his bill. In allowing a general demurrer to the declaration, *Parke, B.*, said,—"It is said, that there is an implied undertaking on the part of the attorney to deliver his bill of costs upon a reasonable request; but this declaration does not contain any allegation of that kind. Then, it is further said, that this is not a mere interlocutory, but a final or collateral order. But in *Emerson v. Lashley*, 2 H. Bl. 248, it was held, that an action would not lie to recover costs ordered to be paid by a rule of an inferior Court in the course of a suit there, notwithstanding the defendant might not be liable to an attachment of the inferior Court, by being resident out of its jurisdiction. The Court there held, that the action would not lie, upon the ground that the proper remedy was by attachment. This case is not distinguishable from that of *Emerson v. Lashley*, where the order was quite as collateral and final as the present." *Martin, B.*, observed, that "In *Carpenter v. Thornton*, 3 B. & Ald. 52, *Holroyd, J.*, says, 'there is no instance of an action brought on a rule of Court for the payment of money. The mode of enforcing such an order is by attachment, for contempt in not obeying the order of the Court.'" *Dent v. Basham*, 9 Exch. R. 469.

CITY OF LONDON REFORM.

THE COMMISSIONERS' RECOMMENDATIONS.

THE following are the principal recommendations of the Commissioners for effecting the proposed reforms in the City of London:—

"1. That a new charter be issued, containing all such provisions in existing charters of the corporation of London, and all such customs of the city, as it may be deemed expedient to preserve.

"2. That the Lord Mayor be elected by the common council, from the common councillors, or from persons qualified to be common councillors.

"3. That the aldermen be elected by the burgesses of the ward for six years, and be re-eligible; that they be justices of the peace during their term of office.

"4. That the powers of the Municipal Corporation Act with respect to the appointment

stipendiary magistrates be extended to the corporation of London.

"5. That the Court of Aldermen be abolished, and that its functions be transferred to the common council.

"6. That the number of wards be reduced to some number not less than 12, nor greater than 16; and that their area and population be, as far as possible, made equal.

"7. That each ward return one alderman and five common councilmen to the common council; and that their qualification be that prescribed by the Municipal Corporations Act for the larger class of boroughs; namely the possession of real or personal estate of 1,000*l.*, or being rated on an annual value of at least 30*l.*

"8. That the voters in the wardhote elections be the occupiers of premises in the ward rated to the amount of 10*l.* per annum, without any additional qualification.

"9. That the elections in common hall be abolished.

"10. That the sheriffs be elected by the common council.

"11. That the Lord Mayor's Court and the Sheriff's Court be consolidated, and that an appeal be given from such Court to one of the Superior Courts at Westminster.

"12. That the Court of Hustings be abolished.

"13. That the Court at St. Martin's-le-Grand be abolished.

"14. That all regulations prohibiting persons not free of the city from carrying on any trade, or using any handicraft within the city be abolished.

"15. That the metage of grain, fruit, and other measurable goods be no longer compulsory.

"16. That the fellowship of porters be dissolved; and that other privileges of porters be abolished.

"17. That the admission of brokers by the Court of Aldermen be abolished.

"18. That the street toll on carts not the property of freemen be abolished.

"19. That the city police be incorporated with the metropolitan police.

"20. That the conservancy of the river Thames be transferred to a board consisting of the Lord Mayor, the First Lord of the Admiralty, the President of the Board of Trade, the Deputy Master of the Trinity House, and the First Commissioner of Woods.

"21. That the exclusive privilege of the Company of Watermen and Lightermen on the river Thames be abolished.

"22. That the accounts of the revenue and expenditure of the corporation be consolidated.

"23. That the money and securities of the corporation be lodged in the Bank of England.

"24. That the election of auditors be amended.

"25. That the provisions of the Municipal Corporation Acts, with respect to the mortgaging of lands, and the making of an annual return of revenue and expenditure to the Secretary of State, be extended to the corporation of London.

"26. That the Irish Society be dissolved; that its trusts be declared by Act of Parliament; and that new trustees be appointed by the Lord Chancellor of Ireland.

"27. That the external boundaries of the city remain unchanged; but that the municipal connexion between the corporation of London and a part of the borough of Southwark be abolished.

"28. That the rest of the metropolis be divided into districts, for municipal purposes.

"29. That in the event of each division being made, a Metropolitan Board of Works be created, composed of members deputed to it from the council of each metropolitan municipal body, including the common council of the city.

"30. That the coal duties now collected by the corporation of London, so long as they remain in force, be under the administration of this board; and that in case the coal duties which expire in 1862 should not be renewed, the 4*d.* duty now levied on behalf of the city should cease at the same time.

"31. That this board be empowered to levy a rate, limited to a fixed poundage, for public works of general metropolitan utility, over the metropolitan district.

"32. That no works be executed by this board unless the plans have been approved by a committee of the Privy Council."

LAW OF COSTS.

OF PURCHASER UNDER DECREE WHERE TITLE DEFECTIVE.

ON the title being defective to an estate sold in a cause, held that the purchaser was entitled to payment out of the fund in Court of his costs, charges, and expenses properly incurred, occasioned by his bidding for and becoming the purchaser of the lot in question, and also his costs of the reference as to title, and of all proceedings consequent thereon, including his costs of and occasioned by the plaintiff's exceptions to the Master's report and the order thereon, and of the application by the purchaser for his discharge and consequent thereon. *Lewis v. Lewis*, 9 Law J., N. S., Ch., 176, was cited. *Perkins v. Eds*, 16 Beav. 268.

OF FRIVOLOUS SUIT BY PURCHASER AS TO FORM OF CONVEYANCE.

The only question in a suit by a purchaser for specific performance was as to the form of the conveyance, the *Master of the Rolls* said,—"This is on both sides as idle a contest as I ever knew brought into a Court of Justice. As far as I have been able to understand the matter, no injury would have arisen to either

party by having the conveyance in one form or the other." His Honour therefore declined to give costs on either side, although the plaintiff was entitled to a decree to have the conveyance in the form he asked. *Clark v. May*, 16 Beav. 273.

POINTS IN EQUITY PRACTICE.

APPEAL FROM DECREE.—INTERLOCUTORY APPLICATION.—LACHES.

"WHERE a decree has been made, and an appeal is brought long after the decree, the Court always leans against the appeal, and this principle applies in my opinion much more strongly to the case of an interlocutory application." Per Turner, L. J., in *Great Western Railway Company v. Oxford, Worcester, and Wolverhampton Railway Company*, 3 De G., M'N. & G. 363.

JURISDICTION ON PETITION BY TRUSTEES OF DISSOLVED FRIENDLY SOCIETY FOR TRANSFER OF FUND.

A sum of money was standing in the joint names of the three trustees of a friendly society established under the 10 Geo. 4, c. 56; 4 & 5 Wm. 4, c. 40; and 9 & 10 Vict. c. 27. The society was dissolved as directed by those Statutes, but one of the trustees refused to join with the two others to withdraw the fund for distribution among the members. On a petition for the appointment, under the 15 & 16 Geo. 4, c. 56, s. 15, of a person to transfer, on behalf and in the name of the dissentient trustee, the fund to the two other trustees, the Vice-Chancellor Wood held he had no jurisdiction, and that the application must be by suit in the usual way. *In re Eclipse Mutual Benefit Association*, 1 Kay, xxx.

CHANCERY RETURNS TO PARLIAMENT.

ORAL EVIDENCE.

THE number of causes in the High Court of Chancery, whether commenced by bill or claim, in which the evidence was taken orally, between the 1st November, 1852, and 1st November, 1853, was 96.

And the number of causes, whether commenced by bill or claim, in which any witness or party was examined therein under the 15 & 16 Vict. c. 86, s. 39, before the Court when such causes were heard, for the same period, was 12.

TRINITY TERM EXAMINATION.

THE Examiners appointed for the examination of persons applying to be admitted Attorneys, have appointed *Tuesday*, the 6th June, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, to take the examination.

The Articles of Clerkship and Assignment, if any, with answers to the questions as to due service, according to the regulations approved by the Judges, must be left at the Law Society on or before *Wednesday*, the 31st instant at the Law Society.

Where the articles have not expired, but will expire during the Term, the Candidate may be examined conditionally; but the articles must be left within the first seven days of Term, and answers up to that time. If part of the Term has been served with a *Barrister*, *Special Pleader*, or *London Agent*, answers to the questions must be obtained from them, as to the time served with each respectively.

A Paper of Questions will be delivered to each Candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Courts. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each Candidate is required to answer *all* the Preliminary Questions (No. 1); and also to answer in *three* of the other heads of inquiry, viz.:—*Common Law*, *Conveyancing*, and *Equity*.

The Examiners will continue the practice of proposing questions in *Bankruptcy* and in *Criminal Law* and *Proceedings before Justices of the Peace* in order that Candidates who may have given their attention to those subjects, may have the advantage of answering such questions, and having the correctness of their answers in those departments taken into consideration in summing up the merit of their General Examination.

Under the new Rules of Hilary Term, 1853, it is provided that every person who shall have given notice of Examination and Admission, and "who shall not have attended to be examined, or not have passed the Examination, or not have been admitted, may *within ONE WEEK after the end of the Term* for which such Notices were given, *renew* the Notices for Examination or Admission *for the then next ensuing Term*, and so from time to time as he shall think proper;" but shall not be admitted until the last day of the Term, unless otherwise ordered.¹

¹ This rule has been made in order to avoid the practice of giving double notices.

NOTES OF THE WEEK.

INQUIRY INTO THE INNS OF COURT AND CHANCERY.

THE Commissioners are directed to inquire into the arrangements in the Inns of Court and Inns of Chancery, for promoting the Study of the Law and Jurisprudence, and securing a sound education to the students. It appears that they have already commenced their labours by sending a circular to the Principal of each Inn of Chancery, requesting a statement of the existing arrangements, for promoting the study of the Law, and particularly as to any lectures, examinations, or library; and the regulations in respect to the admission thereto.

As the members of these Inns of Chancery are almost entirely attorneys and solicitors, we presume they will claim the ancient rights and

privileges which belonged to them, and take their proper position in the proposed University of the Law.

We shall take an early opportunity of advertising to their former state, and considering the improvements which may be effected for the benefit of the larger branch of the Profession.

SCOTCH LAW APPOINTMENTS.

The Queen has been pleased to nominate and appoint *John Deas, Esq.*, one of the Lords of Session, to be one of the Lords of Justiciary in Scotland, in the room of *Henry Cockburn, Esq.*, deceased.

The Queen has been pleased to grant the place of one of the Lords of Session in Scotland to *Charles Neaves, Esq.*, Advocate, in the room of *Henry Cockburn, Esq.*, deceased. From the *London Gazette* of May 16.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Vice-Chancellor Kindersley.

In re Turner's Estate, ex parte Oxford and Rugby Railway Company. May 10, 1854.

RAILWAY COMPANY.—PAYMENT OF PURCHASE-MONEY OUT OF COURT.—COSTS.

On a petition for payment of the purchase-money out of Court of land contracted for in the testator's lifetime with a railway company, but which he had notwithstanding charged with payment of certain legacies subject to a mortgage thereon: Held, that the railway company were not liable to the costs of the appearance of the legatees, but only to those of the petitioners and of the mortgagees—the legatees' costs to be paid by the petitioners.

THIS was a petition for the payment out of Court of the purchase-money of certain lands taken for the purposes of the above railway, and which had been paid into the bank under the 8 & 9 Vict. c. 18, s. 76, upon the mortgagees thereon refusing to take a partial payment. It appeared that the owner had died after entering into the contract with the company, and had charged the estate with payment of certain legacies subject to the mortgage.

Browell, in support, contended that the company were liable to the costs of the legatees who had been served with the petition, as the purchase-money was of the nature of realty, citing *In re Horner's Trust*, 5 De G. & S. 483.

Stevens for the railway company, contra; *Hawkins* for the mortgagees; *Bathurst* for the legatees.

The Vice-Chancellor said, that as the sale was by a tenant in fee, the money was not realty, and that the company were only liable to the costs of the petitioners and of the mortgagees—the costs of the legatees to be paid by the petitioners.

Vice-Chancellor Wood.

Darlington v. Hamilton. April 25, 1854.

SPECIFIC PERFORMANCE OF CONTRACT FOR PURCHASE OF LEASE.—OBJECTION AS TO TITLE.

Where, on a sale of the lease of a house subject to a condition that the purchaser should not insist on the production of the lessor's title, it appeared on the delivery of the abstract that it was held on an under-lease, and that the original lease included other property and was liable to forfeiture on the breach of covenants by the holders thereof in respect of such other property: Held, that as such covenants could not be apportioned, the title was not one which a purchaser could be compelled to accept, and a bill for the specific performance of the contract was dismissed, with costs.

By the conditions of sale of the lease of a house in Upper Albany Street, Regent's Park, the purchaser was precluded from insisting upon the production of the lessor's title. It appeared, however, from the abstract that the house was held on an under-lease, and that the original lease included other property besides the house in question, and was liable to forfeiture by breaches of covenant in respect of other portions of the property comprised therein by the several holders. The defendant accordingly refused to complete, whereupon this bill was filed for a specific performance.

Grenside in support, on the ground that the covenants, as well as the rent had been apportioned among the several properties.

The Vice-Chancellor (without calling on *Roll* and *Selwyn* for the defendant) said, that it did not appear the covenants, upon the breach of which the lease would be forfeited, were capable of being apportioned, and the doctrine of notice in the case of the purchase of a lease did not apply. The title was not one which a purchaser could be compelled to

accept, and the bill would be dismissed, with costs.

Plumbers' Company and another v. Corbet.
April 27, 1854.

INJUNCTION BEFORE HEARING TO RESTRAIN INTERFERENCE BY BUILDING WITH ANCIENT LIGHTS.

A motion was granted for an injunction to restrain a defendant from erecting any building on the site of his house, whereby the free admission of light and air might be hindered or obstructed to the ancient lights of the house in the plaintiff's occupation, and although the defendant offered an undertaking to abide by any order of the Court at the hearing as to the abatement of the nuisance, if any.

THIS was a motion for an injunction to restrain the defendant from erecting any buildings on the site of his house, whereby the free admission of light and air might be hindered or obstructed to the ancient lights of the house in the occupation of the plaintiff, Mr. Beale, as lessee of the other plaintiffs.

Rolt and Jessel in support.

W. M. James and Cole, contra, offered the defendant's undertaking to abide by any order of the Court at the hearing as to abating the nuisance, if any, and citing Smith v. Elger, 3 Jur. 790.

The Vice-Chancellor said, that the injunction would be granted, referring to Dawson v. Paven, 5 Hare, 415, as there seemed to be no doubt of the probability of damage to some of the windows of the plaintiff's house.¹

Lamont v. Carter. May 2, 1854.

SPECIFIC PERFORMANCE OF AGREEMENT ON CEASING FROM COHABITATION.—WANT OF CONSIDERATION.—DEMURRER.

A demurrer was allowed for want of consideration to a bill filed to enforce the specific performance of an agreement entered into with the plaintiff by the defendant, to make certain allowances on ceasing from cohabitation.

THIS was a bill for the specific performance of an agreement entered into by the defendant to pay to a trustee for the plaintiff, who was separated from her husband, and lived with the defendant as housekeeper, a sum of 25s. per week, so long as she should be under medical treatment from the effects of the defendant's violence, and 30s. per week afterwards, until he had received compensation for certain land taken by the Great Northern Railway Company, when he agreed to pay one-sixth part thereof to the trustee for the plaintiff. The agreement recited that the defendant and plaintiff had lived together as man and wife, but had agreed to separate and live apart from each other, and

it was mutually agreed that they should so live apart, and should in no way annoy or molest the other. It appeared that the plaintiff had threatened legal proceedings against the defendant, to recover compensation for the injury sustained by his violence, and that he had thereupon promised to do more for her than the law would compel him, and had accordingly made the agreement now in question. The defendant had ceased to pay the allowance in March, 1849, and had not paid to the trustee the specified portion of the compensation received from the railway company. The defendant demurred, on the ground of want of consideration to the bill, which had been thereupon filed to enforce a specific performance.

Rolt and Martineau for the defendant in support of the demurrer; James and Bagshaw, jun., for the plaintiff, contra.

The Vice-Chancellor said, that an agreement to cease from cohabitation was no more a good consideration than an agreement to cease from the commission of any crime. And assuming that the relation of master and servant existed to the time of the agreement, and that the plaintiff had voluntarily quitted his service, the defendant had gained nothing thereby, and the agreement did not, besides, show on the face of it that the consideration of their living apart was in their mind. Then, in respect to the assault, there was nothing in the agreement about criminal proceedings, as the statement not to annoy or molest could not apply to an indictment, and the right of action of the plaintiff's husband could not be got rid of. The demurrer must therefore be allowed.

Court of Queen's Bench.

Wadsworth v. Bentley. April 24, 1854.

SLANDER.—ACTION FOR WORDS SPOKEN OF TRADER IN RESPECT OF FORMER TRADE.

Slandorous words were spoken of the plaintiff in respect of a trade he carried on as a grocer in 1840, but did not refer to the one he was at the present time carrying on, and which he had commenced in 1848; Held, that as the words were applicable to the plaintiff's general character as a trader, an action was maintainable, and a rule to enter a nonsuit was refused.

THIS was a motion for a rule nisi to enter a nonsuit in this action, which was brought to recover damages for slanderous words spoken by the defendant of the plaintiff in respect of his trade. It appeared on the trial before Cresswell, J., at the last York Assizes, that the words in question referred to the trade which the plaintiff carried on in the year 1840 as a grocer, and not to his present trade, which he had commenced in 1848.

Watson, Q. C., in support.

The Court said, that the words were spoken of the plaintiff as a trader and his general character as such, and his character affected whatever business he might carry on. The rule would therefore be refused.

¹ See *Sutton v. Montfort*, 4 Sim. 559; *Back v. Stacy*, 2 Russ. 121.

Ford v. Campbell. May 4, 1854.

ACTION ON BILL OF EXCHANGE GIVEN FOR DIFFERENCES ON TIME BARGAINS ON RAILWAY SHARES.

To an action by the indorsee against the acceptor of a bill of exchange, the defendant pleaded that it was given in respect of certain losses arising from time bargains in railway shares. The presiding Judge directed the jury that the time bargains were illegal, and the defendant thereupon obtained a verdict: A rule was made absolute for a new trial.

A RULE nisi was granted on April 20 last, to set aside the verdict for the defendant and for a new trial in this action, which was brought by the indorsee against the acceptor of a bill of exchange. The defendant pleaded that the bill had been accepted by him in respect of certain losses arising from time bargains with Messrs. Hill & Co., stockbrokers. It appeared that the bill was given in renewal of one given for the differences on the purchase of railway shares for the account, and which had been from time to time carried over until they amounted to the sum for which the bill was given. On the trial before Lord Campbell, C. J., at the Guildhall Sittings after Hilary Term last, the jury were directed that the time bargains were illegal, whereupon the defendant obtained a verdict. (See *Hewitt v. Price*, 4 Man. & G. 355; 5 Scott, N. R. 229.)

E. James showed cause against the rule, which was supported by Bramwell.

The Court made the rule absolute.

Regina v. Justices of Middlesex. May, 10, 1854.

REMOVAL OF PAUPER.—ORDER OF SESSIONS QUASHING.—CERTIORARI.—INTERFERENCE OF MAGISTRATE WITNESS.

On the hearing of an appeal from an order of removal, a magistrate attended as witness on behalf of the appellant parish, and sat on the bench with the Justices in the usual manner. The order was quashed upon his evidence: Held, that as it was not shown he had influenced the decision, and his sitting on the bench was according to the usual manner when a magistrate was summoned to give evidence, a rule nisi for a certiorari, on the ground of improper interference, to bring up the order of sessions must be discharged, with costs.

THIS was a rule nisi granted on April 20 last for a certiorari to bring up an order of sessions quashing an order of removal of a pauper named Sarah Bailey from the parish of St. George, Middlesex, to the parish of Hornsey. It appeared that on the appeal from the order coming on for hearing, Mr. Cooper, one of the magistrates, and the owner of property in the appellant parish, had been examined on their behalf as to whether the pauper's husband was in his service at Hornsey for upwards of a twelvemonth, and that on his evidence the order was quashed. The rule had

been obtained on the ground that Mr. Cooper had sat on the bench although an interested party, and had improperly interfered with the decision of the Court.

Sir F. Theiger and Bodkin showed cause against the rule, which was supported by Huddleston, citing *Regina v. Justices of Suffolk*, 21 Law J., N. S., Mag. Cas., 169.

The Court said, that the question was, whether Mr. Cooper had interfered judicially so as to influence the decision come to. The fact was, that he only gave his evidence openly as a witness upon oath, and as a magistrate summoned to give evidence had taken his seat on the bench in the usual manner. The rule would be discharged, with costs.

Queen's Bench Practice Court.

(Coram Coleridge, J.)

Mitchell v. Hender. April 27, 1854.

COUNTY COURT ACTS.—CARRYING ON BUSINESS OF SURGEON.—CONCURRENT JURISDICTION OF SUPERIOR COURTS.—COSTS.

The defendant carried on his business as a surgeon, &c., at C., in the district of the Liskeard County Court, but he also attended patients daily at their houses in the district of the Launceston County Court: Held, that he carried on business within the jurisdiction of the Launceston County Court under the 9 & 10 Vict. c. 95, s. 128, and a rule was refused under the 15 & 16 Vict. c. 54, s. 4, for the plaintiff's costs in an action brought for work done in that district.

THIS was a motion under the 15 & 16 Vict. c. 54, s. 4, for a rule nisi for the plaintiff's costs in this action which was brought for work done in a mine within the jurisdiction of the Launceston County Court, against the defendant who carried on his business as a surgeon, &c., at Callington, in the district of the Liskeard County Court.

Maynard for the plaintiff, in support, on the ground that the cause of action did not arise within the jurisdiction of the County Court in which the defendant dwelt or carried on his business under the 9 & 10 Vict. c. 95, s. 128, and that the Superior Court had therefore concurrent jurisdiction.

Collier, for the defendant, showed cause in the first instance on the defendant's affidavit that he was in the habit of daily attending patients at their houses in the district of the Launceston County Court.

The Court said, that the defendant carried on his business in the same jurisdiction as the cause of action arose, and the rule was therefore refused.

Court of Common Pleas.

Stokes v. Grissell. May 10, 1854.

COUNTY COURT.—CONCURRENT JURISDICTION OF SUPERIOR COURTS.—DISTANCE OF 20 MILES.—CARRYING ON BUSINESS.

Quære, whether the distance of 20 miles,

which there must be between the respective places of residence or carrying on business of the plaintiff and defendant in order to give the Superior Courts jurisdiction under the 9 & 10 Vict. c. 95, s. 128, is to be calculated in a straight line or by the road.

Where the affidavits did not establish that the defendant carried on business in the district, although stating him to be rated and to have his name on the counting-house, a rule nisi to set aside an order for the plaintiff's costs under the 15 & 16 Vict. c. 54, s. 4, was discharged.

THIS was a rule nisi obtained on April 28 last to set aside an order of Creswell, J., under the 15 & 16 Vict. c. 54, s. 4, for the plaintiff's costs in this action. It appeared that the plaintiff's place of business was at Stangate Mills, Lambeth, and that the defendant resided at Norbury Park, near London, which was at a distance of 19 miles only in a straight line, but above 20 by the road. The question was whether the case was within the jurisdiction of the Southwark County Court.

Lush showed cause against the rule, citing *Regina v. Inhabitants of Saffron Walden*, 9 Q. B. 76; *Leigh v. Hind*, 9 B. & C. 774; and on the ground that the affidavits did not allege the defendant carried on any business at Stangate Mills.

Hon. G. Denman, in support, contended the affidavits were sufficient as they stated the defendant to be rated and to have his name on the counting-house there.

The Court said, that, without giving any opinion as to how the 20 miles were to be measured, the rule must be discharged upon the ground that the affidavits did not establish that the defendant carried on any business in the district of the County Court.

Hughes v. Great Western Railway Company.
May 2, 1854.

RAILWAY COMPANY.—ACTION AGAINST AS COMMON CARRIERS FOR NON-DELIVERY WITHIN REASONABLE TIME.—SPECIAL CONTRACT.—NONSUIT.

In an action against the defendants as common carriers to recover damages for the non-delivery of pigs within a reasonable time, it appeared that the person who booked them received at the time a paper containing a contract that the defendants should not be liable for their carriage by any particular train or in time for any particular market. A rule was discharged to set aside the nonsuit which had thereupon been directed.

A RULE nisi had been obtained on April 19 last, to set aside the nonsuit and for a new trial in this action, which was brought to recover from the defendants as common carriers for the non-delivery within a reasonable time of 20 pigs. It appeared on the trial before Jervis, C. J., at Warwick, that the pigs were delivered at the Southall station, on the defendants' line, on a Tuesday night, for delivery

at Birmingham, and that they did not arrive until the middle of Thursday, when the market was nearly over, and that they were damaged by their long fast to the extent of about 15l. The defendants pleaded that they did carry the pigs within a reasonable time, and also that the pigs were received subject to a contract that the defendants should not be liable for their carriage by any particular train or in time for any particular market, and it appeared that when the pigs were booked a paper containing such terms was given, and a nonsuit was thereupon directed.

Mellor showed cause against the rule, which was supported by *Miller*, S. L., and *Hayes*.

The Court said, that as the pigs were not received under the contract set out in the declaration, and the learned Judge was bound to direct the jury to find for the defendants on that issue, the nonsuit could not be disturbed, and the rule would be discharged.

In re Bernays. April 28, 1854.

FINES' AND RECOVERIES' ACT.—CONVEYANCE BY MARRIED WOMAN WITHOUT HUSBAND'S CONCURRENCE.

A motion was granted for leave to a married woman to convey under the 3 & 4 Wm. 4, c. 74, without the concurrence of her husband, where he had gone to South America in 1846, and not since been heard of.

THIS was motion under the 3 & 4 Wm. 4, c. 74, for leave to a married woman to convey without the concurrence of her husband, where he had gone to South America in the year 1846, and had not since been heard of.

Collier in support.

The Court granted the application.

In re Anon. May 10, 1854.

FINES' AND RECOVERIES' ACT.—CONVEYANCE BY MARRIED WOMAN LIVING APART FROM HUSBAND.

Leave was granted under the 3 & 4 Wm. 4, c. 74, to a married woman to convey a rent charge without the concurrence of her husband, where they had been living apart by mutual consent since January, 1840.

THIS was an application under the 3 & 4 Wm. 4, c. 74, for leave to a married woman, who had been living apart from her husband by mutual consent since January, 1840, to convey a rent charge without his concurrence.

The Court granted the application.

Court of Exchequer.

Allum v. Bowthwaite. May 5, 1854.

NEW TRIAL WHERE VERDICT UNDER 20l., WHEN GRANTED.

A rule was made absolute for a new trial, notwithstanding the damages were under 20l., where the presiding Judge was dissatisfied with the verdict, and the conduct of some of the jury showed a prejudice

against the defendant, and also where the evidence on which the verdict passed was in direct opposition to that of the defendant, and was of a boy in the opinion of two persons not to be believed on oath (per Pollock, L. C. B., and Parke and Platt, BB.; *dissentiente* Martin, B.)

THIS was a rule nisi granted on January 31 last, for a new trial of this action to recover damages for wrongfully seizing and detaining the plaintiff's cow as damage feasant, whereas it was on the high road and not on the defendant's land. On the trial before Platt, B., the plaintiff obtained a verdict with 10*l.* damages, on the evidence of the plaintiff's cow-boy that the animal was in the road, whereas the defendant swore it was on his land. It appeared that some of the jury had, while the trial was pending, expressed themselves in favour of the plaintiff and against the defendant.

Thomas, S. L., and Griffiths showed cause against the rule on the ground the damages were under 20*l.*, and that the question of credibility was one for the jury.

Skinner in support on the ground that perjury was implied to the defendant by the verdict, and that prejudice existed in the minds of the jury, and also that the boy was not to be believed on oath.

The Court (per Pollock, L. C. B., and Parke and Platt, BB., *dissentiente* Martin, B.) said, that the rule would be made absolute for a new trial, notwithstanding the damages were under 20*l.*, not with reference to the question as to loss of character, but on the ground that the presiding Judge was dissatisfied with the verdict, and that there had been disclosed conduct on the part of some of the jury which showed a prejudice against the defendant, and besides that it was shown by the opinion of two people that the boy upon whose evidence the verdict passed was not worthy of belief.

Baker v. Steen. April 22; May 1, 1854.

**BILL OF EXCHANGE DRAWN IN BLANK.—
STAMP.**

In an action by the indorsee against the acceptor of a bill of exchange, it appeared to have been sent from the continent drawn in blank, to an agent, with particular instructions as to its application, but which the agent disregarded, and obtained the defendant's acceptance thereto on his private account: Held, that the bill was a foreign and not an inland one, and might be sued on without a stamp.

THIS was a motion for a rule nisi for a new trial of this action, which was brought on a bill of exchange by the indorsee against the acceptor. It appeared on the trial before Pollock, L. C. B., that the bill had been sent from the continent drawn in blank, to an agent in this country, with special instructions to fill up and negotiate the same on his behalf with reference to certain consignments, but that the agent had

obtained the defendant's acceptance thereto on his own private account. The learned Judge having, on the trial, overruled an objection that the bill could not be sued on here for want of stamp, by reason of its being an inland and not a foreign bill, this motion was made on the ground of misdirection, for a new trial.

Chambers in support.

Cur. ad. vult.

The Court said, that although the drawer had forwarded secret instructions to his agent, he must be held to have intrusted his agent with the power of dealing with the bill in whatever way he pleased, and was therefore liable as regarded the whole world, when his draft was negotiated. It was therefore a foreign bill, and the rule must be refused.

Thomas v. Russell. April 25; May 1, 1854.

ACTION FOR ASSAULT.—EVIDENCE OF BONA FIDES.—RECORD OF CONVICTION.

On the trial of an action to recover damages for an assault, with a count to recover certain oysters, it appeared the defendant claimed as lessee of certain oyster beds, and had given the plaintiff in charge for felony, but which was dismissed: Held, that the record of a conviction of other parties for stealing from the same oyster beds was not receivable in evidence on the issue of the defendant having acted *bona fide* and having reasonably believed he had the exclusive right to the fishery.

THIS was a motion for a rule nisi for a new trial of this action which was brought to recover damages for an assault, and with a count to recover certain oysters. It appeared on the trial before Platt, B., at the last Liverpool assizes, that the plaintiff was an oyster dredger at Beaumaris, and that the defendant claimed the exclusive right of fishery under a lease from the Bishop of Bangor. On the plaintiff having carried the oysters to Liverpool, the defendant seized the oysters and preferred a charge of felony against the plaintiff before the borough magistrates, who dismissed the charge, whereupon this action was brought. Evidence was rejected on the trial of the record of a conviction under the 7 & 8 Geo. 4, c. 29, before Lord Campbell, C. J., at the Carnarvon summer assizes, of certain persons for stealing from the oyster bed in question, which was tendered to show that the defendant had acted *bona fide* and had reasonable ground for believing that he had the exclusive right of fishery.

Watson in support.

Cur. ad. vult.

The Court said, that as a mere document the record of the conviction could have no effect on the *bona fides* of the defendant's conduct or belief, although proof of the knowledge of the facts, on which the conviction proceeded, might have been given in evidence with that object. The rule would therefore be refused.

The Legal Observer,

AND

SOLICITORS' JOURNAL

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SATURDAY, MAY 27, 1854.  
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TAXES ON THE ADMINISTRATION OF JUSTICE.

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If it could ever be possible to feel confident that a real Law Reform was about to be adopted it would be now, for Lord Brougham has energetically taken up a matter of Law Reform which is one, not of doubtful expediency, but of unquestionable justice. The noble and learned lord has declared his intention to urge on the Legislature the abolition of all official fees now payable by the unfortunate suitors. Under such circumstances, we have no doubt that, but for the Czar's ambitious wickedness, this great reform would be effected at once. The Chancellor of the Exchequer may, however, step in and say that the public necessities will allow of no subtraction of income, nor of any increase of expense. If he should do so, we fear that this real act of justice will be delayed until the great enemy of all that is good in Europe shall have been overcome. In the meantime, we desire to aid as much as possible the efforts of Lord Brougham, and in doing so we feel no small satisfaction in referring to our past labours in the same cause—labours which we may reasonably assume not to have been without their effect in producing what now seems to be an almost universal opinion. We have always insisted that the individual suitor ought not to be taxed for the ascertainment and enforcement of that law the knowledge of which is a necessity to all, and the obedience to which is a security to all.

The principle of the proposed reform is clear beyond all doubt, and we shall here reproduce two or three short extracts from former articles, wherein we earnestly recommended that principle, and gave illustrative

analogies to which we never yet heard a successful reply.

Above 11 years since, in our 26th Volume, while remarking on the proposed constitution of Local Courts, we observed—“It will be said that the fees of Courts must vary according to the tribunal, and that the establishment of Local Courts would be beneficial to the poor, because the Court fees there would be smaller than in the Superior Courts, called the Courts of Westminster Hall. This is an observation that has been so often made, and the fallacy, the folly involved in it so often acted upon, that we are justified in assuming it to be made now. And our answer, plain, simple, direct, and unequivocal, is, that *Court fees ought not to exist*. We have long entertained and often expressed our opinion on this point.”

In our 35th Volume, in an article on “Taxes on the Administration of Justice,” we said—“By what right is it that the State requires a man to pay it for discharging this its first and most imperative duty? So far as the protection of the subject when abroad is concerned, it makes no such claim upon his purse—why should it do so in the case of his protection at home? If his ship was captured by a pirate in some distant sea, the Government would not only not charge him the pay and pensions of officers and crew, and the wear and tear of a State vessel which happened to be on that distant sea and recaptured his ship, but would actually go to the heavy expense of sending out such a vessel to effect the recapture, or at least to punish the pirates who had robbed him. Why should the State do this without charge to the merchant, and yet charge with heavy expense the same merchant, who, to get back his property from a private wrong-doer at

home, asks the assistance of a Court of Justice?"

And again, in another article in the same Volume, we remarked—"Practically it would seem that the tribunals did not exist for the whole kingdom, but were created specially at the moment for the individual suitor. He is in the situation of a man who should buy a carriage and horses, establish a place to keep them in, and servants to take care of them and to drive them, but who should find himself called to pay a fare every time he used them. In the case of the private individual, such a demand on his purse would probably make him give up the carriage and horses. But the subject cannot give up the Courts and their Judges and officers. There they are, and there the Government insists that they shall be. And why? Let us take the most favourable answer that the Government can give to this question, and (putting out of view all reasons of dignity, power, and patronage), suppose it to say,—the Courts are maintained because no one can foresee the time when he may need their aid, and the Government must provide for even the possible wants of every subject of the Crown. Exactly so, and that is just the reason why no individual should pay fees when his wants compel him to enter one of these Courts. The answer shows that they are kept up for the whole community, not for the individual suitor. All the property in the kingdom which does not come into litigation receives a value from that litigation to which the rest is subjected. Mr. A., who never practically knew what a lawsuit was, obtains all the benefit of one from the fact that Mr. Z. has been compelled to undergo its troubles."

These extracts show the principle on which the proposed reform proceeds, and we make them with no little pleasure, as evidence of the early and earnest interest we took in a subject which was at the bottom of all real Law Reform, and the neglect of which, up to this time, has been, more than anything else, the cause of Law Reform having been incomplete.

REPORT OF THE BANKRUPTCY COMMISSIONERS.

PROPOSED AMENDMENTS IN PENAL PROVISIONS.

AMONGST the causes, which the Commissioners state have produced the diminution in the business of the Bankruptcy

Courts, are the *severity of the penal provisions* of the Consolidation Act of 1849. They observe that—

"By the 201st section, certain offences are enumerated, such as losing, at any time, however remote, by any sort of gaming or wagering, in one day the sum of 20*l.*, or losing within twelve months preceding the bankruptcy the sum of 200*l.*, or losing within the like period of twelve months the like sum of 200*l.* by any time bargain in Government or other stock, or parting with, concealing, destroying, altering, mutilating, or falsifying books, papers, writings, or securities after an act of bankruptcy, or in contemplation of bankruptcy, or with the intent to defeat the object of the Bankruptcy Law, or making false or fraudulent entries with intent to defraud creditors, or concealing any property, or suffering a false debt to be proved, and not disclosing it within one month after the bankrupt knows it. By the commission of any of these offences, if established against him, the bankrupt is precluded from obtaining the benefit of a certificate of conformity. Indeed, as the law now stands, a merchant who has carried on an extensive business with prosperity and success, and is unexpectedly brought down to a state of insolvency by a series of misfortunes which he could not anticipate, would be absolutely unable, if he had lost 20*l.* on a horse-race at any antecedent period, to claim his certificate during the rest of his life. Unless he could pay his debts in full, his incapacity of holding property would last for ever."

This provision of the Statute (which is taken from the 130th section of the 6 Geo. 4, c. 16) is evidently too stringent, and the Commissioners think that the making the validity of the certificate cognizable in other Courts in the cases therein mentioned is also objectionable. The judgment of the Court of Bankruptcy, subject to appeal, should be conclusive on that question.

The 256th section, as now drawn, is also, in the Commissioners' opinion, unnecessarily harsh and severe.

"It enumerates certain offences which, if substantiated at the last examination, or at any adjournment thereof, would apparently oblige the Commissioner to refuse the bankrupt any further protection, although by a preceding section (the 112th) he has clearly and indisputably the power to grant it. Moreover, the 256th section includes among the enumerated offences, not only acts which are obviously contrivances to defeat the objects of the Law of Bankrupts, but others also which have not necessarily an intent so fraudulent. We can see no reason for diminishing the power which the Commissioner has, under the 112th section, of granting protection to the bankrupt, except so far as such power is controlled by any of the following recommendations.

"With respect to some of the cases provided for in the 201st section—namely: after an act of bankruptcy or in contemplation of bankruptcy, destroying, altering, mutilating, or falsifying books; or making or being privy to any false entries in any book of account with intent to defraud creditors; or concealing any property with the like intent; or suffering a false debt to be proved, and not disclosing it to his assignees within one month after the bankrupt knows it,—in such cases we think it should be obligatory upon the Court to refuse the allowance of the certificate altogether, and also thereupon to refuse protection.

"With respect to some of the other cases provided for in the 201st and 256th sections—namely: losing by gaming or wagering in one day 20*l.*, or 200*l.* within one year; or losing 200*l.* by stock jobbing; or any of the offences mentioned as the fourth, fifth, and eighth of those enumerated in the 256th section,—we think it should be obligatory upon the Court to suspend the certificate for a period not exceeding three years, nor less than one; and the provision against stock jobbing should extend to time bargains in shares in railway and other public companies, and in foreign stock.

"With respect to the other offences enumerated in the 256th section, these as well as other commercial delinquencies not enumerated should be dealt with by the Court under the discretionary power in the 198th section, subject, of course, to the power of appeal."

Under these circumstances the Commissioners are unanimously of opinion, and accordingly recommend, that the imperative part of the 256th section, as to refusing protection in certain cases on the last examination, should be repealed; while some of the Commissioners, who differ from the foregoing expressions of opinion on this part of the subject, think that during the interval between the adjudication of bankruptcy and the allowance or refusal of the certificate, protection to the bankrupt should always be given, in justice to himself as well as for the benefit of his creditors. His personal services are then required for preparing his accounts, and for affording explanation and co-operation in the management of his affairs.

The Commissioners further recommend that such parts of the 201st and 256th sections as they propose to retain, with some alteration, should be incorporated in one section:—

"So that if the bankrupt shall, either after an act of bankruptcy, or in contemplation of bankruptcy, or within two months next preceding the filing of the petition for adjudication of bankruptcy, and with the intent to defeat the object of the Law of Bankruptcy, or to defraud his creditors, have parted with, concealed, destroyed, altered, mutilated, or falsified, or

caused to be concealed, destroyed, altered, mutilated, or falsified, any of his books, papers, writings, securities, or any documents relating to his trade, dealings, or estate;—

"Or if the bankrupt shall, either after an act of bankruptcy, or in contemplation of bankruptcy, or within two months next preceding the filing of the petition for adjudication of bankruptcy, and with the like intent, have been party or privy to the making of any false or fraudulent entry in or omission from any book of account or other document;—

"Or if the bankrupt shall, either after an act of bankruptcy, or in contemplation of bankruptcy, or within two months next preceding the filing of the petition for adjudication of bankruptcy, and with the like intent, have concealed any part of his property of the value of 20*l.* or upwards;—

"Or if any person having proved a false debt under the bankruptcy, such bankrupt being privy thereto, or, afterwards knowing the same, shall not have disclosed the same to his assignees within one month after such knowledge;—

"Then and in such or any of such cases, the Court shall refuse to grant him a certificate, and shall also refuse to grant him protection:—

"And if the bankrupt shall, within one year next preceding the filing of the petition for adjudication of bankruptcy, have lost by any sort of gaming or wagering in one day 20*l.*, or at any time within such year 200*l.*;—

"Or if the bankrupt shall, within one year next preceding the filing of the petition for adjudication of bankruptcy, have lost 200*l.* by any contract for the purchase or sale of any government, foreign, or other stock, or any shares in any partnership, association, or company, corporate or unincorporate, to which the 'Joint-Stock Companies' Winding-up Act, 1848," applies, where such contract was not to be performed within one week after the contract, or where the stock or shares bought or sold were not actually transferred or delivered in pursuance of such contract;—

"Or if the bankrupt shall, at any time within two months next preceding the filing of the petition for adjudication of bankruptcy, fraudulently, in contemplation of bankruptcy, and not under pressure from any of his creditors, but with intent to diminish the sum to be divided among his creditors, or to give an undue preference to any of his creditors, have paid or satisfied any such creditor, wholly or in part, or have made away with, mortgaged, or charged any part of his property, of what kind soever;—

"Or if the bankrupt shall at any time after the filing of the petition for adjudication of bankruptcy, and with intent to diminish the sum to be divided among his creditors, or to give an undue preference to any of his creditors, have concealed from the Court or his assignees any debt due to or from him, or have concealed or made away with any part of his property, of what kind soever;—

"Or if the bankrupt shall, at any time after the filing of the petition for adjudication of bankruptcy, have wilfully prevented or withheld the production of any book, paper, deed, writing, or other document relating to his trade, dealings, or estate;"—

Then, and in such or any of such cases, it is proposed that the Court shall suspend the certificate for a period not exceeding three years nor less than one.

Connected with the other penal clauses are the 257th, the 258th, and the 259th. These sections, which are simply penal, have probably a greater influence on the business of the Court than any others of the penal provisions. They are new, and, in the Commissioners' opinion, cannot be justified. They turn the creditor who has proved a debt into a judgment creditor, and enable him to enforce a writ of execution against the person of a bankrupt to whom the Commissioner may have refused protection, on any ground whatever; and that too without further accusation, trial, or conviction. A power of this kind is impolitic and mischievous; for the punishment inflicted will seldom operate by way of example, as it may be procured at the suit of a private person and for private purposes—it may also be exercised maliciously and vindictively. The Commissioners think such a power ought not to be entrusted to any creditor under a bankruptcy, and therefore that these sections ought to be repealed.

ALTERATION IN CLASSIFICATION OF CERTIFICATES.

Connected with the amendment of the penal sections of the Act of 1849, we may next advert to the alterations proposed by the Commissioners in the granting of class certificates.

Much evidence was taken on this subject before the Committee of the House of Lords during last Session. Further evidence from all parts of the kingdom has been since brought before the Commissioners. In the country the classes seem to be less regarded than they are in London. In both there is a considerable difference of opinion respecting their value. Some witnesses speak of them as vexatious and useless; others denounce them as odious and unjust; others approve of them in the highest terms. In the midst of so many contradictory conclusions, it is necessary to examine the grounds and reasons on which they are founded.

"On the one hand it is represented to us, that this is a novelty in the law of England;—that it enables a single Judge, without the in-

tervention of a jury, with scarcely even the form of a trial, and without a definition of the offence, to brand a man for life with that which may be felt as the indelible stigma of a third-class certificate;—that this is punishment and not administration;—that administration is the only direct duty which a Court of Bankruptcy should have to perform;—that the obvious principle of the Bankrupt Laws is to take from the debtor all his property for the payment of his debts, upon the condition that when he has secured a complete transfer of it, he should be entitled as of right to a discharge from all his liabilities;—that to deprive him of his estate and punish him also, for conduct which the law would not have regarded as criminal if he had continued solvent, is not only harsh but unjust;—that if any punishment is at all to be left in the discretion of the Commissioner, it should be limited to the refusal or suspension of the certificate;—that the penalties of classification are provided not as substitutes for, but as additions to, those of suspension or refusal;—that the latter penalties may be, and in fact are, put in force with the same frequency and severity now as before classification existed;—that the attempt to classify the character of bankrupts according to their conduct, without any standard rule or gauge by which such character or conduct is to be measured, must leave the whole matter in so much uncertainty, that the credit intended for the first-class certificate and the censure attached to a third-class certificate will be equally misapplied and ought to be equally disregarded;—that it is found by experience that different Commissioners have different views of commercial propriety and commercial misconduct, and consequently there is no uniformity of decision, and none can be expected; that although, whenever a certificate is granted, it is made imperative on the Court to place the bankrupt in one or other of the three classes, no provision is or can be made for bringing all the facts bearing on the classification under the notice of the Commissioner;—that these facts may be, and too often are, intentionally withheld;—that it may be, and often is, the case where little or no assets are realised, that the bankrupt has first misconducted himself in diminishing the estate, and, next, has secured himself from the stigma of a third-class certificate by depriving his creditors of the pecuniary means essential to an effective scrutiny of his conduct;—that the effect of these and other penal clauses is to deter the creditor of respectable but unfortunate traders from bringing them into Court, and the traders themselves from resorting to bankruptcy;—and that for such and the like reasons the clauses establishing the classification of certificates ought to be repealed.

"On the other hand it is contended, that although this is a novelty in the Law of England to a certain extent, it is not so altogether;—that the principle of conferring the power of punishment on a single Commissioner, is as fully conceded by giving him the power of withholding the certificate, or suspending it

without protection, as it is by giving him the power of awarding a certificate of the third-class; that although the certificate is the usual consequence of the *cessio bonorum* which the law enforces, yet in many cases, such as fraud or gambling, the Statute itself denies to the bankrupt the benefit of obtaining it under any circumstances, even when it has stripped him of all his property:—that the suspension or classification of the certificate is only a modification of the same principle which the law has thus already recognised and always acted upon;—that the certificate in fact is not a right that any one may claim, but a privilege to traders, which no other class of insolvents enjoys, and therefore, like all privileges, it may be subjected to conditions that are reasonable in themselves and beneficial in their effects;—that it is unjust to the honest trader whose insolvency has been occasioned by losses and misfortunes that could not be anticipated, to be sent back again into the ‘arena of commerce’ with nothing to distinguish him from the dishonest trader, whose bankruptcy was owing to his own misconduct;—that advantages arise both to the mercantile community and in many cases, to the bankrupt himself, by noting that distinction;—that the beneficial results of this classification have been strongly evidenced by the extreme anxiety which different Commissioners have observed in bankrupts to obtain a high class and to avoid a low one;—that although a third-class certificate is a brand or stigma in a figurative sense, yet it cannot be considered, if justly awarded, as a brand or stigma imposed by the law, but a brand or stigma which is self-imposed, and knowingly incurred, because it is the necessary and inevitable result of the misconduct which the insolvent has chosen to pursue;—that the severity of the punishment, if there be any severity, arises therefore from the moral misconduct of the party himself, and not from the system, or the act of the Judge, who through the certificate expresses his judgment on that misconduct;—that the uncertainty of the law, and the want of uniformity in the Commissioners’ decisions, is rather a reason for prescribing a clearer and better rule for their guidance in future than for superseding the system of classification altogether, if that system in other respects has been found to be advantageous;—that the preponderating opinion among the Commissioners of the Court, as well as in the trading world, is in favour of some classification, and that therefore it would be unadvisable and highly impolitic to subvert a system, recently introduced, generally approved of by those most interested in it, and capable of amendment in the only points which are open to objection.”

It cannot be denied (says the Commissioners) that there is considerable force in both these views. But they rest so much on the opinions of witnesses rather than on facts adduced in evidence, that the Commissioners are unable to state whether the

system of classification has or has not been productive of benefit. Both as regards the past and the future, the Commissioners have failed to arrive at any definite conclusion; and they regret to say, that after great deliberation they are still divided in opinion. Some of them think that the system of classification should be abolished altogether; whilst others are of opinion that to a certain extent it ought still to be continued, provided it can be cleared of the vagueness and uncertainty which appear to have produced, under similar circumstances, very different decisions. They are all agreed, however, that the law, as it stands, is so vague and ill-defined that it cannot be administered with justice or precision.

“By the law as it now stands,¹ the Commissioner is to have regard to the conformity of the bankrupt to the Law of Bankruptcy and to his conduct as a trader before as well as after his bankruptcy: and then he is to certify, in awarding the class of certificate, either that his bankruptcy has arisen from unavoidable losses and misfortunes, or that it has not wholly arisen from unavoidable losses and misfortunes, or that it has not arisen from unavoidable losses and misfortunes. There can hardly be a doubt that the object of those who framed this provision was to say, that bankruptcy from misfortune should entitle a man to a first class, that bankruptcy from misconduct should degrade him into a third, and that the intermixture of the two should place him in the second. There is to be a certificate of approval, a certificate of disapproval, and a certificate importing neither the one nor the other. Assuming, however, that this is the construction, the language is ambiguous, and there are numberless cases which would not be defined.”

“To remedy this ambiguity, some witnesses have suggested that the body of the Statute should point out the circumstances which should act as a guide to the Commissioner in his judgment, and then that the certificate should simply be a certificate of the first, second, or third class, according to the degree of approval or disapproval which ought to be applied to the bankrupt’s conduct.

“Others have considered that some such plan as the foregoing should be adopted, but that the Commissioner should state in the certificate the grounds of his decision, in order that they might be known to the mercantile community, and also that they might be rectified, if wrong, upon appeal.

“Others, again, have despaired of making three distinctions, which will not create uncertainty and confusion; and they have, therefore, recommended two certificates, the one, a certificate of approval, which would indicate to the world that the inability of the bankrupt to

¹ 12 & 13 Vict. c 106, s. 198.

meet his engagements was owing to his misfortune, and not to his fault; the other, a simple certificate of conformity which should intimate no opinion of his conduct; but in so far as that conduct might deserve punishment, the refusal, or suspension, or adjournment of the certificate should be the mode by which it should be conveyed.

"These suggestions deserve every consideration, not only on account of the high authority from which they come, but also for the improvements which they evidently contemplate.

"With regard to the first and second, it appears to us, that if the threefold classification of certificates were still to be retained, it would be advisable that the Act itself should be more specific than it is at present, and that the Commissioners should indicate shortly the grounds upon which the certificate was awarded, in order that the case might be better heard on appeal, and also that the public might be made aware of the reasons with reference to the trader's conduct, which raised him into a high class, or degraded him into a low one. We recommend that this should be done if the threefold classification should still be continued. But it may be doubted whether it would be practicable to work out a system of threefold classification with perfect fairness, since the same facts will strike the minds of different Judges in different ways; since circumstances material to the truth of the case will often be withheld; and since it is hardly possible to draw a clear and definite line which will distinguish either the first from the second, or the second from the third class."

It appears that some of the Commissioners would object to classification in whatever way the system might be modified, since such modification can only be regarded by them as a contrivance for abolishing a simple certificate of conformity, or rendering it discreditable to the bankrupt and prejudicial to his future prospects.

But those of the Commissioners who still approve of some system of classification agree in the opinion that two classes will be preferable to three; the one for *approval* of the bankrupt's conduct as well as for his conformity to the law, and the other only for *conformity*; leaving the punishment, or stigma of dishonesty to be attached to those who have misconducted themselves, by *refusing* the certificate, or *suspending* or *adjourning* it, as the justice of the case may seem to require. They would accordingly recommend that a provision be inserted in the body of the Act of Parliament requiring the Court to grant either a certificate of conformity and approval, or a certificate of conformity only, and distinguishing the circumstances under which they are to be awarded, as described in the terms of the certificate.

"The form of the certificate, after briefly referring to the completion of the examination, might in its substantial parts run as follows:—'And having regard to the conformity of the said bankrupt to the Law of Bankruptcy, to the mode in which he has kept his books and accounts, and his conduct in that and in all other respects as a trader, as well before as after his bankruptcy, the Court did then and there find the said bankrupt entitled to such certificate.' Then if the Commissioner should award a certificate of conformity only, such certificate should proceed simply as follows:—'And the Court doth hereby award him a certificate of conformity;' but if the Commissioner should award a certificate of approval, it should be in the words following:—'And it is hereby further certified that the Court doth approve of the conduct of the said bankrupt in respect to the mode in which he has kept his books and accounts, and in all other respects as a trader; and doth award him a certificate of such approval accordingly.'"

PUBLICITY OF PROCEEDINGS.

Another cause of diminished business, as stated in the report, is the unwillingness of creditors to undergo an exposure of their affairs.

"The evidence given in a paper sent in to us by some leading solicitors in the city of London is clear upon this point. They say, and the statement is generally confirmed by most of the witnesses,—'The creditors complain that the control and management of the bankrupt's estate is taken from them, and they have to attend a crowded Court with great formalities: and the frequent publication in the newspapers of the names of the creditors, the debts proved, and discussions on contested debts, have also tended to make the system unpopular to creditors.

"On the part of the merchant debtors of a higher class, there has always been an objection to pass through the ordeal of bankruptcy, and this has been greatly increased by the present constitution of the Court, and especially since the last Act has given the Court all the attributes of a criminal tribunal."

"These remarks are entitled to consideration; but we cannot forget that publicity is an important and necessary incident to every Court of Justice. The principle must be preserved without being unduly pressed. And it appears to us that a more general adoption of the means provided by the existing law for the reception of proofs of debts by affidavit, subject to the power of summoning the claimant for oral examination, will, without interfering with that principle, meet the real exigency of the case; more than that can hardly be expected. The objection taken on the ground of formality, as far as it applies, may be met by allowing the transaction of portions of the purely administrative business of the Court before the Commissioners in Chambers. Such

a practice might advantageously be introduced."

NEW COURTS AND OFFICES.

The Commissioners are strongly in favour of bringing the Bankrupt Courts and offices of the official assignees to the same locality as the proposed new Courts of Law and Equity.

"It appears to us" (they say) "that the building in Basinghall Street, which was erected in 1822 for the purpose of providing rooms for the meetings of the then London lists of Commissioners of Bankrupt, affords very insufficient accommodation for the suitors, practitioners, and others resorting to the present Courts.

"Moreover the rooms devoted for offices to the Accountant in Bankruptcy are small and inconvenient. The office of the Taxing Master is quite unsuitable. The messengers' offices take up a portion of the very confined space in the Courts themselves. The official assignees cannot be accommodated within the building; and altogether it is ill adapted and inadequate to the requirements of the establishment.

"We are therefore of opinion, that in the event of any plan being carried into effect for bringing your Majesty's Courts of Law and Equity in London into one central position, it would be desirable that the London Court of Bankruptcy should be removed to the same locality. Besides the improvement of accommodation, other advantages would be likely to ensue. Opportunities of more frequent intercourse with the higher functionaries of the law, the presence of a more numerous Bar, and greater readiness of access to all members of the Profession, could not fail to be beneficial and to promote in various ways the efficiency of the Court. Any supposed inconvenience to traders of the city of London from having to attend a Court situated a short distance westward of its present locality, would be more than compensated by the additional facilities which their attorneys would have for combining practice in bankruptcy with their other legal business, and for readily obtaining, when requisite, the assistance of counsel. The facilities, too, of proving unopposed debts by affidavit and the appointment of numerous officers before whom affidavits may be made, render the locality of the Court immaterial to the great body of traders, even of the city of London; while, by reason of the increase of the metropolis westward, and the enlargement of the area over which the jurisdiction of the London Court extends, the present site has become less appropriate than it was at the time of its original selection.

"The assembling of the official assignees, as well as the other ministerial officers of the Court, under one roof, with a view to their better superintendence and control, and to the more ready transaction of business, was recommended by the Commissioners for inquiring into Bankruptcy and Insolvency in 1840;

but the difficulty of obtaining a suitable site has hitherto prevented its accomplishment. The arrangement which we suggest would afford an opportunity for the attainment of this important object."

AMENDMENTS IN THE COMMON LAW PROCEDURE BILL.

We are glad to find that this important measure is making progress in Parliament, and we now lay before our readers the substance of the amendments made by the Select Committee of the House of Lords.

As to Arbitrations.—One of the objections justly made by Lord St. Leonards to the indefinite power of arbitrators to enlarge the time for making their award, might be removed by rendering it necessary to obtain a Judge's order to enlarge the time, on the application for which the opposite party would have an opportunity of being heard and preventing unnecessary delay.

The following are the amended sections on this subject:—

If no application is made to set aside any award within the first seven days of the Term next following its publication, or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, such award shall be final between the parties; (s. 9).

Award may, by authority of Judge on terms, be enforced after seven days from publication, although time for moving to set aside not elapsed; (s. 10).

The Court or Judge may stay proceedings taken by one party to any instrument in writing for a reference to arbitration, on an application after appearance and before plea; (s. 11).

On the failure of the parties to instrument to appoint arbitrators, or of the arbitrators to act or appoint umpire or third umpire in terms of deed, a Judge may appoint upon seven clear days' notice being given; (s. 12).

Every agreement or submission to arbitration, whether by deed or instrument in writing not under seal, may be made a rule of Court, unless a contrary intention appear; (s. 13).

As to the number of the Jury.—If 10 or 11 of the jury shall agree, their verdict shall be taken and have the same force and effect as if unanimous, and if 10 or 11 cannot agree after twelve hours' deliberation, the jury to be discharged; (s. 17).

As to the Examination of Witnesses and their Oath.—The language of the affirmation instead of oath is varied; (s. 21).

A party may discredit his own witness if he shall, in the opinion of the Judge, prove adverse; (s. 23).

As to Deeds, &c., insufficiently stamped.—A proviso is added to s. 30, which directs the officer of the Court to receive the duty and penalty on stamping a document at the trial, di-

fecting the enactment shall not extend to any document which cannot now be stamped after the execution thereof on payment of the duty and a penalty.

Error on Special Case.—The Court of Error is required to draw any inferences of fact from the facts stated in the special case which the Court where it was originally decided ought to have drawn; (s. 33).

Affidavits on new matter.—Leave of the Court or a Judge is required on affidavits in answer upon new matter in affidavits of opposite party (s. 46), and also for the delivery of written interrogatories at any time to the opposite party or his attorney; (s. 52).

The equitable replication under s. 86 must begin with the words "for replication on equitable grounds," or words to the like effect, and s. 87 provides that the Court or Judge may strike out the equitable plea or replication on such terms as to costs and otherwise as may seem reasonable.

The continuance of action in case of death, must be made by summons, and in default of continuance, a suggestion of default may be entered and judgment for costs of action and suggestion; (s. 93).

The claimant in a second action of ejectment, where prior action unsuccessful, for same premises against same defendant, may, on application to Court or Judge after appearance, be ordered to give security for costs; (s. 94).

Writs of execution issued before October 24, 1852, if unexecuted, not to remain in force for more than six months after 24th October, 1854, unless renewed under the 15 & 16 Vict. c. 76, s. 124; (s. 95).

The provisions relating to the Superior Courts to apply to the Court of Common Pleas at Lancaster and the Court of Pleas at Durham, (s. 101), and the provisions as to the Masters of the Superior Courts to apply to the Prothonotaries of the Palatinate Courts; (s. 102).

The Court of Queen's Bench to be the Court of Appeal from the Palatinate Courts in reference to motions for new trials, or to enter verdicts or nonsuits previously made to the Judges of such Courts; (s. 103).

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

COMMONS' INCLOSURE ACT.

17 VICT. c. 9.

An Act to authorise the Inclosure of certain Lands in pursuance of a Report of the Inclosure Commissioners for England and Wales. [12th May, 1854.]

WHEREAS the Inclosure Commissioners for England and Wales have, in pursuance of "The Acts for the Inclosure, Exchange, and Improvement of Land," issued their provisional orders for and concerning the proposed inclosures mentioned in the Schedule to this Act, and have in their Ninth Annual General Report certified their opinion that such in-

closures would be expedient; but the same cannot be proceeded with without the previous authority of Parliament: Be it enacted, as follows:—

1. That the said several proposed inclosures mentioned in the Schedule to this Act be proceeded with.

2. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use either the expression "The Annual Inclosure Act, 1854," or "The Acts for the Inclosure, Exchange, and Improvement of Land."

Schedule to which this Act refers, with dates of Provisional Orders.

Heavers Wood Common, Surrey—3rd March, 1853.

Lampeter-pont-Stephen, Cardigan—10th June, 1853.

Iping, Sussex—2nd June, 1853.

Cardigan, Cardigan—2nd December, 1853.

Barlby, York—31st December, 1853.

Church Brough Intake, Westmorland—2nd December, 1853.

Curdridge, Southampton—12th January, 1854.

Porlock, Somerset—25th January, 1854.

Bursledon, Southampton—12th January, 1854.

The Oakcutts Woods, Southampton—23rd January, 1854.

Wootton Courtney, Somerset—26th January, 1854.

Hawkridge, Somerset—26th January, 1854.

Tinhead, Wilts—28th January, 1854.

LAW OF ATTORNEYS AND SOLICITORS.

SERVICE OF ARTICLED CLERK UNDER AGREEMENT FOR ASSIGNMENT.

A CLERK was articulated to an attorney and solicitor on Jan. 25, 1849, and duly served under the articles up to June 26, 1851, when the attorney, at the request of the clerk and his father, agreed to assign the articles to the father and to execute the deed of assignment when tendered. The clerk on the same day went to his father's office and served until Jan. 25, 1854, but no assignment was executed until Jan. 10, 1852. On an application for the clerk to be at liberty to give the requisite notices of examination in the ensuing Term, *Crompton, J.*, observed,—"The language of the Statute¹ is very express. I do not see how service under an agreement for an assignment can be reckoned as service under the assignment;" and, in granting a rule for the examination, added, "I am strongly of

¹ 6 & 7 Vict. c. 73, s. 3.

opinion that the applicant will not be entitled to be admitted upon this examination." *Ex parte Bruton*, 1 Lowndes & Maxwell, 219.

LAW OF COSTS.

SECURITY FOR COSTS ON PLAINTIFF'S GOING ABROAD PENDING SUIT.

THE plaintiff was resident in England in March, 1851, when he filed his bill, but being in embarrassed circumstances in May, 1852, he went to, and was still resident in, Jersey. On a motion that he might give security for costs, the *Master of the Rolls* said,—“I think you are entitled to the order. The state of the case is this:—this gentleman, in the early part of the year, leaves his residence, and it does not appear where he went, except that for some time he was residing with his solicitor. He then appears in Jersey, and writes that he thinks of coming back.

“This is not a case of a plaintiff who, having ordinary residence here, goes abroad for a temporary purpose. It is clear, that, in consequence of pecuniary embarrassments, arising out of other circumstances, the plaintiff has not, and does not intend to have, any fixed residence in this country.” *Weeks v. Cole*, 14 Ves. 518, was cited. *Blakeney v. Dufaur*, 16 Beav. 292; 2 De G., M’N. & G. 771.

NOTES ON RECENT STATUTES.

RETROSPECTIVE OPERATION OF NEW CHANCERY ACTS.

A REFERENCE was directed to the Master in 1850, and it was ordered that the defendant should be examined upon interrogatories as the Master should direct. A motion for the defendant’s examination *videlicet* by the Master under the 15 & 16 Vict. cc. 80, 86, was refused, and it was held that the Acts did not apply to causes which were in the Masters’ offices when they came into operation. *Routh v. Tomlinson*, 16 Beav. 251.

LAW STUDENTS’ MUTUAL CORRESPONDING SOCIETY.

FIRST ANNUAL REPORT.

THE Committee in presenting to the Members this their First Annual Report of the proceedings and progress of the Society, have great pleasure in being enabled to congratulate them upon the permanent establishment of an organised system of intercommunication amongst Articled Clerks.

Your Committee feel that to enumerate the many advantages accruing to the Law Student from mutual intercourse with his fellows, would be quite an act of supererogation, but nevertheless they would urge upon all, the consideration of those advantages which they regret have at present received so little attention at the hands of the Junior Members of the Profession.

Your Committee deem it advisable briefly to advert to the distinguishing features and objects of this Society in the hope of attracting the attention of those Articled Clerks who are not at present aware of its existence. It is designed, first—As a means of friendly intercourse and for the purpose of engendering feelings of unanimity and friendship amongst Articled Clerks; secondly—To supply the wants of a Debating Society in small towns, by affording a medium for the written discussion of moot points, and the composition of essays; and thirdly—By the same means, to furnish opportunities to the Student to apply principles to practice, and thus assist him in obtaining a practical knowledge of his Profession.

It affords much satisfaction to your Committee to state that the Society now numbers upwards of thirty members, but still considering the number of Law Students in the kingdom, they cannot but feel some surprise that so few should as yet have joined the Society; but as they hope that this has arisen chiefly from ignorance on the part of the Profession, either of the existence or objects of the Society, they trust, by the publication of this Report, to bring the Society more generally before that numerous body, for whose benefit it has been established, and that this increased publicity may be followed by a considerable and speedy accession of members.

With regard to the financial position of the Society, your Committee have to report—That finding it impossible to carry on the Society with the revenue arising from the subscriptions originally proposed, they have found it necessary to call upon each of its members for the payment of an annual subscription of 2s. 6d., in addition to an entrance fee of 2s. 6d. payable on admission.

Your Committee, with the view of adding to the stability and importance of the Society, recommend that it should not be confined exclusively to Articled Clerks, as they consider that the interests of the Society would be materially consulted, if solicitors could be induced to give it their countenance and co-operation, by becoming *honorary* or ordinary members; and in furtherance of so desirable an object, propose that solicitors be invited to become *honorary* members upon payment of a donation of half-a-guinea, or an annual subscription of 5s., or ordinary members upon the same terms as the other members of the Society.

CHARLES R. GILMAN, Hon. Sec.
St. Giles’ St., Norwich, April 9, 1854.

BARRISTERS CALLED.

Easter Term, 1854.

LINCOLN'S INN.—May 1.

Jasper Kenrick Peck, Esq.
 John Hutton Tayler, Esq., M.A.
 George Pemberton, Esq., B.A.
 Herbert Crichton Stuart, Esq., B.A.
 Francis Barchard, jun., Esq., M.A.
 William Worsley Knor, Esq., B.A.
 Charles Herbert Smith, Esq., M.A.
 William Hampden Perfect, Esq., LL.B.
 Charles Mahon Tyndall, Esq., M.A.
 Cyrus Slater, Esq., B.A.
 Charles Meaburn Tatham, Esq., M.A.
 Thomas Prothero, Esq.
 Randolph Henry Crewe, Esq., M.A.
 William Charles Wilks, Esq.

INNER TEMPLE.—May 1.

John Edward Palmer, Esq.
 William Rainy, Esq.
 Matthias Calthrow Turner, Esq.
 George Bryan Bryan, Esq.
 Patrick M'Gregor Robertson, Esq.
 Alfred Augustus James, Esq.
 Edwin Ward, Esq., B.A.
 William Hepworth Dixon, Esq.
 Henry Watson, Esq., B.A.
 John Airey, Esq.
 Charles Pontifer, Esq., B.A.
 John James Heath Saint, Esq., B.A.
 Henry Charles Taylor, Esq.
 Hon. Francis Dudley Stuart Wortley.
 William George Granville Vernon Harcourt,
 Esq., B.A.
 Thomas Bell, Esq.
 Philip Henry Le Breton, Esq.
 Jonathan Darby, Esq., B.A.
 Joseph Augustus Yorke, Esq.

MIDDLE TEMPLE.—May 1.

Hubert Lewis, Esq., B.A.
 Rowland Whitehall Kenyon, Esq., M.A.
 Abercromby Robert Dick, Esq.
 John Turner Hopwood, Esq.
 Henry Edward Daniels, Esq.
 Fred. Benj. D'Elwood Ramadge, Esq., B.A.
 John Kirke, Esq.
 William Thomas Greenhow, Esq., B.A.
 Philip Meadows Martineau, Esq., LL.B.
 Robert Patten Adams, Esq.
 Edward Matthew Fenwick, Esq.

ARTICLED CLERKS' QUERIES AND ANSWERS.

HOURS OF ATTENDANCE.—TIME FOR STUDY.

To the Editor of the *Legal Observer* and
Solicitors' Journal.

SIR,—I was articled about three years ago to a solicitor in the country. The office hours (which during that time I have regularly observed) are from 9 A. M. to 8 P. M.

Would an application for any, and how much, time during those hours for any pri-

vate reading be unreasonable? It appears hard for one to be engaged during the fourth year of service in copying and ordinary office work, with now and then a conveyance to draw, and *without* any right of appropriating some time to preparation for an examination which threatens to be of no ordinary character; and especially when the office hours are so heavy as those named above. And is not such a state of things (if there be anything unreasonable in such an application) repugnant to the spirit of the articles usually entered into between master and clerk?

A CONSTANT SUBSCRIBER.

[We think that the attendance of an articled clerk from 9 till 5 is *generally* sufficient, though on urgent occasions he should continue his services to a later hour. He should have the evening to pursue his studies. The attorney is bound to teach and instruct his articled clerk in the profession of an attorney and solicitor, and to aid him in preparing for his admission on the Roll, and this cannot be done without a regular course of reading.—ED.]

MODE OF SERVICE UNDER ARTICLES.

An Articled Clerk is a member of the Honourable Artillery Company, the duties of which require his attendance not less than 24 times in the year, but after 6 o'clock in the evening. He is also liable to be called out to suppress riots, and other extraordinary occasions. Will this membership affect the service under the articles? MILES.

[We think not, if the clerk's absence be with the attorney's permission. The Examiners have recently held that service for 21 days in the local militia does not prejudice the clerk.—ED.]

SELECTIONS FROM CORRESPONDENCE.

INSURANCE AGAINST FIRE.

I LATELY sent an agent to effect an insurance against fire in the General Life and Fire Insurance Company, and received an acknowledgment that A. B., having made a proposal for insuring the sum of £ , which is entered in the office books, the same is accepted, subject to the printed conditions of the office; and a policy expressive of particulars will be delivered, *unless the company shall, by a letter from their secretary, decline the insurance, and in which case the money received will be returned by application at the office.*

As this appears to be a novel proceeding, I think it right to draw public attention to it, especially as no limit is fixed within which the secretary is empowered to annul the insurance.

Possibly some of your subscribers can in-

form the Profession whether the same principle is acted on in other offices.

CUI-BONO.

CHANCERY COSTS.

Should not a uniformity of practice exist in Chancery charges, where exactly the same trouble is taken, although the suit is commenced by a different form of proceeding. In a claim or summons, the fee allowed as instructions for and entering appearance for nine defendants, would be 1*l.* 1*s.* On a bill or special case, only 6*s.* 8*d.* is allowed. In the latter cases the instructions are generally much more extensive.

The Taxing Masters should also have their

attention drawn to the fact, that where it is necessary to copy tables or figures into a brief, it will be generally found, according to present computation, that each will contain about three folios only. The charge of 3*s.* 4*d.* a sheet in such cases for 10 folios, will often prove a loss to the solicitor.

The registrar before he settles the minutes or passes an order, always inquires whether notice has been given to the opposite party, and if not, he requests it may be—this sometimes will extend itself to four or five solicitors, and probably at some great distance—still no allowance is made for such notices, now considered absolutely necessary. At Common Law such notices would be allowed. E.C.

CANDIDATES WHO PASSED THE EXAMINATION.

Easter Term, 1854.

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &c.</i>
Aldham, Robert Huxley	Boys Robert Aldham
Allen, James, jun.	Henry Nicol
Amery, Henry Dickinson	Rowland Price
Arnall, Joseph	Henry Thompson
Arundel, Robert	John Bailey Girdlestone; Bertie Markland
Backhouse, Thomas James	Richard Backhouse
Batchelor, George Beetham	John Elliot Wilson
Beale, Samuel Martin	John Stallard
Bisdee, Thomas Denning	Henry Davies
Blagg, Charles John	Robert Griffin
Bradshaw, Richard	William Humphrey Pilcher
Bresley, Albert	Edward Thomas Whitaker
Brutton, William Courtenay	Henry Ford; Charles Brutton
Callaway, John, jun.	George Forley
Canham, Henry Crabb	George William Andrews; Frederick Solly Gosling
Carr, Edward Statter	John Newbold; Algernon Sydney Field
Cartwright, Frederick Henry	Frederick Hawksley Cartwright
Chambers, William	Richard Williams
Chapman, George	John Innes Pocock
Cole, Henry	William Lambert
Collinson, John William Sowden	John Collinson
Cooke, Charles James	John Lovegrove; Charles Bell; Joseph Lovegrove
Crawford, William Henry	Henry Ray Freshfield
Creery, Leslie	Robert Furlay
Crowther, William Alfred	Frederick Farrar
Dalton, Thomas Masters	Thomas Dalton
Davies, Rees Thomas	John Jackson Price
Davis, Frederick John	Thomas Morgan
Dinn, Henry	William Hayley Engleheart; Robert Breeze
Dodd, John Thomas	Robert John Porcher Broughton
Drawbridge, William	James Campey Laycock
Dunn, William	Edward Thomas Whitaker
Dymond, Edward Ernest	John Gidley
Dysart, William Hobson	John Vaughan
Earle, Augustus Percy, M. A.	Nicholas Earle
Everest, William Alexander	William Everest
Faber, Henry Grey	Thomas Henry Faber; Thomas Tudor Trevor
Fielding, Henry	Henry Kingsford
Footner, George Maughan	George Bright Footner
Fry, Lewis	James Livett
Gaskell, Samuel	Ralph Leigh
Glubb, William Frederick	William Gill Glubb; Peter Burke Glubb
Gough, Alexander Clement Foster, B. A.	Joseph Foster; Edward Henry Richards
Gould, Thomas	Edward John Blair
Gratton, Richard Thomas	John Cutts
Green, James, jun.	Johnson Atkinson Busfield
Greenway, John	William Lavers, jun.
Haines, John	Samuel Haines
Hickman, William	Charles Davies

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &c.</i>
Hillman, Edward	John Tattersall Auckland
Hillman, Robert William	Robert Hillman
Hinde, Charles Heaton	John Thompson; James Watkins
Howell, Edward Joseph	Thomas Acres Curtis
Hughes, Walter, jun.	Francois Kearsey
Jaquet, George Robert	Thomas Moseley; William Moseley Tayler
Jeffery, John Rust	Edward Lane Swatman
Johnson, Samuel George	Knowles King
Jones, Henry	Francis Gibbs Abell
Jones, Samuel	John Hawley Edwards
Kell, Thomas Edward	George Brooke Nelson
Kelly, Charles Frewen, M. A.	John Peter Fearon
King, Arthur Wightwick	Baldwyn and Morgan
Lander, William May	Alfred Goddard
Leathes, Charles Edmund Stanger	Samuel Cotton
Lomax, Richard	Alfred Grundy
Marshall, Thomas	George Furlley; Stephen Charles Venour
Marshall, William	John Edwin Marshall
Mitchell, William Wagner	Thomas George
Moordaff, William	Richard Armistead
Morris, Thomas Porter	Thomas Morris; John Fortescue
New, Francis Charles	William Gibson
New, Frederick Bayly	Richard Bowerman; William Sandys
Parker, William	Robert Christopher Parker
Peek, Richard	Philip Octavius Jervis; Hen. Moore; John Bishop
Pollard, John Metcalfe	William Romaine Gregg
Preston, Richard Montague	Timothy Tyrrell
Rackham, Matthew Robert	Robert Wortley
Robinson, Arthur Ingram	Dixon Robinson
Robson, Edward	William Frogatt Robson
Rowland, Richard	Christopher Robson; Charles Henry Edmands
Rudge, Edmund, jun.	Joshua Thomas
Rush, Edward	John Roger Rush
Sheppard, Charles Edward	Charles Augustus Helm; Edwin Wilkins Field
Smith, Henry John	John Thomas Tenney
Sturt, William	William Charles Sole
Swan, John	William Grant Allison; Robert Swann
Taylor, Albon	Edward Erskine Tustin
Taylor, George Whitfield	William George
Thomas, Isaac	John Maybaw; Ralph Darlington; Thos. Frederick Taylor
Thompson, John	John Musgrave; Peter Wright
Tibbits, John Markham	Arthur Bayley Markham
Tompkins, Henry	Inigo Gell; James Sowton
Tootal, Montague Robert	James Wheeler; Samuel Benjamin Merriman
Tuke, Henry George	Charles Druce; Rowland Nevitt Bennett
Turner, William	George Wood
Wadson, James Weyman	Samuel James Wadson; Charles Evans
Walls, James Gordon	William Albert Walls; Edward Frederick Burton
Way, Charles	Henry John Mant; Nathaniel Bridges
Wayman, Ephraim	Edmond Foster
Wild, James Anstey, B. A.	John Mackrell; William Macmurdo Hacon
Williams, Charles	William Williams; George Williams
Winter, George	George Joseph Twiss; Frederick Grain

PROFESSIONAL LISTS.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 25th April to 19th May, 1854, both inclusive, with dates when gazetted.

Barley, Edmund, Frederic James Wise, and Robert Dawbarn, jun., March, Isle of Ely, Attorneys and Solicitors (so far as regards the said Edmund Barley). April 25.

Jameson, John, and Thomas Gibson Cant, Penrith, Attorneys and Solicitors. May 12.

Kidson, John, and Henry Dixon, Sunderland, Attorneys and Solicitors. April 25.

Orchard, Thomas, and George James Eady,

15, Hatton Garden, Attorneys and Solicitors. May 9.

Robinson, Alfred, and Robert Haynes, 17, Orchard Street, Portman Square, Solicitors, May 9.

COUNTRY COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

Appointed under the 16 & 17 Vict. c. 78, with dates when gazetted.

Burd, Lawrence, Shrewsbury. May 2,

Clark, Alfred, Moulton. May 5.

Collins, Thos., Bury St. Edmunds. May 2.

Hawke, Henry, Sheffield. May 19.

Hinton, Frederic, Lyme Regis. May 2.

Macaulay, Wm. Henry, Leicester. May 16.

Metcalfe, Frederic Morehouse, Wisbeach. May 9.

Page, George, Birmingham. May 19.

Page, William Sutton, Stroud. May 9.

Payn, William, Birmingham. April 25.

Pinniger, Henry William, Westbury. May 5.

Stevens, Richard, Witham. May 19.

Stevenson, John Mackness, Northampton. May 16.

PERPETUAL COMMISSIONER.

Appointed under the Fines and Recoveries' Act, with date when gazetted.

Simonds, Robert Withington, Winchester, in and for the City of Winchester, also in and for the County of Hants. May 12.

NOTES OF THE WEEK.

NEW MEMBERS OF PARLIAMENT.

Henry Manners, Baron Waterpark, for the city of Lichfield, in the room of Thomas Geo. Anson (commonly called Viscount Anson) now Earl of Lichfield, called up to the House of Peers.

Frederick North, Esq., for Hastings, in the room of Musgrave Brisco, Esq., who has accepted the office of Steward of her Majesty's Chiltern Hundreds.

Sir Thomas Erskine Perry, Knight, for Devonport, in the room of the Right Hon. Henry Tufnell, who has accepted the office of Steward of her Majesty's Manor of Northstead.

LAW APPOINTMENTS.

Gillery Pigott, Esq., has been appointed Counsel to the Board of Inland Revenue, in the room of Thomas Phinn, Esq., M. P., appointed Counsel to the Admiralty and Judge Advocate of the Fleet.

COLONIAL LAW APPOINTMENTS.

The Queen has been pleased to appoint William Young, Esq., to be Attorney-General, and William A. Henry, Esq., to be Solicitor-General for the Province of Nova Scotia.—From the London Gazette of May 23.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Vice-Chancellor Kindersley.

In re Drewry's Trusts, ex parte Overseers, &c., of Whitehaven. May 5, 1854.

MAINTENANCE OF LUNATIC PAUPER AND WIFE AND CHILD.—PAYMENT OUT OF FUND IN COURT.

An order was made on petition for the payment of the expenses for the support of a lunatic pauper in an asylum, and of his wife and child by the parish, out of a fund paid into Court under the 10 & 11 Vict. c. 96, to which he was entitled, with a declaration that the fund was liable for the future maintenance.

THIS was a petition for the payment to the petitioners of the expenses for the support of lunatic pauper in an asylum, and of his wife and child, out of a fund in Court paid in under the 10 & 11 Vict. c. 96, to which he was entitled, and for a declaration that such fund was liable for the future maintenance. The fund had not been invested.

Tripp, in support, cited *In re Upfall's Trust*, 3 M. & G. 281; *Read v. Legard*, 6 Exch. R. 636.

The Vice-Chancellor said, there was great difficulty with respect to applying the corpus of a pauper's property for past expenses of maintenance, although the income might properly have been so applied, but upon the authorities cited the order would be made as asked.

Vice-Chancellor Wood.

Shroeder and others v. Shroeder. May 5, 1854.

WILL AND CODICIL.—HEIR-AT-LAW.—ELECTION.

A testator, by his will, dated in 1825, devised all his real estate of or to which he then was or at the time of his decease should be seised or entitled, or which he then had or thereafter should have power to dispose of or appoint by will, on certain trusts for his wife and children, and by a codicil in 1827, after reciting a contract for the purchase of an estate, he directed the same to be held on the trusts of the will. The estate was afterwards conveyed to him on the usual trusts to bar dower: Held, on special case, that as it was the testator's intention by his codicil to confirm his will, but the subsequent conveyance took the estate out of the codicil, and it passed to the eldest son as heir-at-law, the heir-at-law was put to his election to take under the will or such estate.

THIS was a special case under the 13 & 14 Vict. c. 35. The testator, by his will, dated in July, 1825, devised all his real estates of or to which he then was, or at the time of his decease should be, seised or entitled, or which he then or thereafter should have power to dispose of or appoint by will, upon the trusts therein mentioned for his wife and children. By a subsequent codicil, after reciting a contract entered into in November, 1827, for the purchase of freehold property at Stockwell, he declared that it should be held by his execu-

tors and trustees on the same trusts as declared by the will as to the real estate therein comprised, and the estate was afterwards conveyed to the testator to the usual uses to bar dower. On the death of the testator in September, 1832, the eldest son entered into possession of the property at Stockwell, in accordance with the opinion of the late Mr. Preston that the subsequent conveyance revoked the codicil. The youngest child attained the age of 21 in September, 1851, and this special case was stated, the eldest son being defendant, and the other children plaintiffs.

W. H. Terrell for the plaintiffs; *Rolt* and *A. Smith* for the defendant.

The *Vice-Chancellor* said, it was the intention of the testator, by his codicil, to confirm the arrangements of his will. The subsequent conveyance, however, had taken the estate at Stockwell out of the codicil, and was an estate of which the testator died seised. There must, therefore, be a declaration for the heir to elect whether he would take it and abandon his interest under the will, or convey the estate and accept under the will.

Court of Queen's Bench.

O'Toole v. Brown and others. May 3, 1854.

WILL.—CONSTRUCTION.—“ESTATE AND EFFECTS OF WHAT KIND SOEVER.”—REAL ESTATE.

A testator gave and bequeathed all his “estate and effects of what kind soever” upon the trusts contained in the will: Held, sufficient to pass real estate.

The testator, by his will, gave and bequeathed all his “estate and effects of what kind soever” upon certain trusts as therein mentioned, and a question now arose in this case, whether such words were sufficient to pass real estate.

Cur. ad. vult.

The Court said, that the word “estate” was sufficient to pass real estate unless there was something in the will to show that it was used in a less extensive sense. Here, however, the trusts were applicable to real as well as to personal estate, and indicated no preference for the eldest son, but that all the children should be placed on an equal footing. It was contended that the absence of the word “devise” showed the testator's intention to die intestate as to his real estate, but the words used, “give and bequeath,” were quite sufficient, and the presumed intention was rebutted by the addition of the words “of what kind soever.” The defendants were therefore entitled to judgment.

Gurney and others v. Behrend and others. May 3, 1854.

BILL OF LADING, TRANSFER OF.—RIGHT OF UNPAID VENDORS TO STOP IN TRANSITU.

A bill of lading of a cargo of corn purchased of the defendants, but not paid for, had been transferred to the plaintiffs for a valuable consideration with the defendants'

authority: Held, that the defendants' right of stoppage in transitu was gone.

In this case it appeared that the defendants had stopped in *transitu* a cargo of corn purchased of them, and which had not been paid for, and that the bill of lading had been transferred to the plaintiffs with the defendants' authority before such stoppage, for a valuable consideration.

Cur. ad. vult.

The Court said, that as the defendants being unpaid vendors had *prima facie* a right of stoppage in *transitu*, it laid on the plaintiffs to show such right was gone. A bill of lading would not pass by delivery for a valuable consideration, like a bill of exchange, without regard to who made the transfer, but it was necessary to show it came into the plaintiffs' hands before the stoppage, with the defendants' authority. As it appeared from the evidence, therefore, that the defendants had so authorised the transfer, the plaintiffs were entitled to judgment.

Regina v. Jervis. May 4, 1854.

WEIGHTS AND MEASURES ACT.—APPOINTMENT OF POLICE SUPERINTENDENTS AS INSPECTORS.—CERTIORARI.

Quære, whether the appointment as inspectors of weights and measures in certain districts of a company under the 5 & 6 Wm. 4, c. 63, of two superintendents of police is valid, although without salary, under the 2 & 3 Vict. c. 93, s. 10.

But a rule was made absolute, with costs, to quash a certiorari to bring up such order of appointment, a certiorari being taken away by the 36th section of the 5 & 6 Wm. 4, c. 63.

THIS was a rule nisi to quash a certiorari which had been granted to bring up two orders by the sessions for the county of Suffolk under the 5 & 6 Wm. 4, c. 63, appointing two superintendents of police as inspectors of weights and measures in certain districts of the county, but without salary, and directing the days on which they should attend with the standards.

By the Rural Police Act, 2 & 3 Vict. c. 93, s. 10, it is enacted, that “all chief and other constables appointed under this Act shall be restrained from employing themselves in any office or employment for hire or gain other than in the execution of their duties under this Act.”

Worledge showed cause, and referred to the 17th section of the 5 & 6 Wm. 4, c. 63, which enacted that the justices of the peace “shall direct what reasonable remuneration shall be paid to such inspectors for the discharge of such duties as they shall have been ordered by such justices or magistrates as aforesaid to perform.”

Power and *Couch* in support, on the ground that the certiorari was taken away by the 36th section of the Act.

The Court accordingly made the rule absolute, with costs.

Whitmore v. Horne. May 5, 1854.

ACTION FOR BREACH OF COVENANT TO INSTRUCT APPRENTICE ON SALE OF BUSINESS.

The defendant, after having covenanted by a deed of apprenticeship to instruct the plaintiff in the business of a chemist, &c., sold the business to another person: Held, overruling a demurrer to the declaration in an action to recover damages for breach of the covenant, that the covenant was a personal one and could not be fulfilled by procuring the plaintiff to be instructed by the successor in the business.

THIS was an action to recover damages for the breach of a covenant in a deed of apprenticeship whereby the defendant covenanted to instruct the plaintiff in the business of a chemist, druggist, and dentist—the defendant having disabled himself by the sale of his business.

Milward appeared in support of a demurrer to this declaration on the ground that the covenant was not personal and would be fulfilled by his causing the plaintiff to be instructed by his successor.

The Court (without calling on *Brett* for the plaintiff) said, that the contract was founded on the personal confidence in the defendant's skill and character, and that a breach was committed by the sale, and the plaintiff was therefore entitled to judgment.

Mudd v. Fagg. May 5, 1854.

COMMON LAW PROCEDURE ACT.—COUNT IN DECLARATION ON ACCOUNT STATED.—OMISSION OF WORDS "MONEY PAYABLE."—DEMURRER.

A count in a declaration followed the 6th form in Schedule B. to the 15 & 16 Vict. c. 76, on an account stated, but omitted the words "money payable," directed by form 1, to precede money counts: A demurrer to the count was overruled upon the authority of s. 91 of the Act.

THIS was a demurrer to a count in the declaration following the 6th form in Schedule B. to the 15 & 16 Vict. c. 76, which is as follows:—"Money found to be due from the defendant to the plaintiff on accounts stated between them."

M. Lloyd in support, on the ground of the omission in the declaration of the words "money payable," referring to Form 1 in Sched. B., which is as follows:—"Money payable by the defendant to the plaintiff for [these words money payable, &c., should precede money counts like 1 to 14, but need only be inserted in the first] goods bargained and sold by the plaintiff to the defendant."

Raymond, contra, was not called on.

The Court, after referring to s. 91 of the Act, said, that in this case the defendant knew

the money was necessarily payable, and therefore was not prejudiced by the omission of the words, and the plaintiff was therefore entitled to judgment.

Burchfield v. Moore. May 5, 6, 1854.

BILL OF EXCHANGE.—ACTION BY INDORSEE AGAINST ACCEPTOR.—MATERIAL ALTERATION.—DISCHARGE OF ACCEPTOR.

To an action by the indorsee against the acceptor of a bill of exchange, the defendant pleaded that the words "payable at the Bull Inn, Aldgate," had been added after acceptance, without his knowledge or consent: Held a material alteration, and on demurrer to the replication that the bill had been indorsed to the plaintiff for value before it became due, and without notice of the alteration, judgment for the defendant.

TO this action by the indorsee against the acceptor of a bill of exchange, the defendant pleaded that it had been altered in a material particular since acceptance. The case now came on upon a demurrer to a replication that the bill had been indorsed to the plaintiff for value before it became due and without notice of the alteration. It appeared that the words "payable at the Bull Inn, Aldgate," had been added without the defendant's knowledge.

Holland, for the defendant, in support of the demurrer; *Bovill* for the plaintiff, contra.

Cur. ad. vult.

THE Court said, that if the words added had been in the defendant's handwriting, there would still have been a general acceptance, but as they were added without his consent they constituted a material alteration and varied the contract between the parties to the bill, and therefore discharged the acceptor. The bill had ceased to be the accepted bill, and the plaintiff as indorsee was in no better position than the indorser. The defendant was entitled to judgment.

Court of Exchequer.

Chaplin v. Levy. May 1, 1854.

CITY OF LONDON SMALL DEBTS' ACT.—CERTIFICATE FOR COSTS WHERE VERDICT ABOVE 20/.

Held, that the certificate for costs under the 15 & 16 Vict. c. lxxvii., in an action where the plaintiff recovers a verdict above 20/., need not be given forthwith.

THIS was a motion for a rule nisi to set aside a verdict of *Erle, J.*, for the plaintiff's costs in an action where he had recovered a verdict above 20/.

be sufficient, and those and the like forms may be used, with such modifications as may be necessary to meet the facts of the case; but nothing herein contained shall render it erroneous or irregular to depart from the letter of such forms, so long as the substance is expressed without prolixity."

¹ Which enacts, that "the forms contained in the Schedule B. to this Act annexed shall

By the City Small Debts' Act, 15 & 16 Vict. c. lxxvii., s. 119, it is enacted, that "if any action shall be commenced after the commencement of this Act in any of her Majesty's Superior Courts of Record, for any cause" "for which a plaint might have been entered in the Court holden under the provisions of this Act, and a verdict shall be found for the plaintiff for a sum not more than 50*l*., if the said action is founded on contract," "the plaintiff shall have judgment to recover such sum only and no costs," "unless the Judge who shall try the cause shall certify on the back of the record that the action was fit to be brought in such Superior Court;" and by s. 120, that "if in any action commenced after the passing of this Act in any of her Majesty's Superior Courts of Record," &c., "the plaintiff shall recover a sum less than 20*l*., " &c., "the plaintiff shall have judgment to recover such sum only, and no costs," &c.; "provided always (s. 121), that if the plaintiff shall, in any such action as aforesaid, recover a sum less than the sum in that behalf hereinbefore mentioned, by verdict, and the Judge or other presiding officer before whom such verdict shall be obtained, shall forthwith certify on the back of the record that it appeared to him at the trial that the cause of action was one for which a plaint could not have been entered in the Sheriff's Court, or that it appeared to him at the trial that there was a sufficient reason for bringing the said action in the Court in which the said action was brought, the plaintiff in such case shall have the same judgment to recover his costs that he would have had if this Act had not passed."

Pulling in support, on the ground that the certificate should have been given forthwith.

Cur. ad. vult.

The Court said, that as it appeared from the Act that, although in cases under 20*l*. the certificate must be given forthwith, in cases above that sum the Judge might give it at his leisure, the rule would be refused.

Nichols v. Gayford. May 3, 1854.

APPEAL FROM COUNTY COURT.—ACTION AGAINST OWNER OF ADJOINING LAND FOR NEGLIGENCE IN EXCAVATING.—CONTRACTOR.

The plaintiff obtained a verdict in the County Court in an action against the owner of land adjoining his house for negligently excavating his ground so that the plaintiff's wall, &c., had fallen, although it appeared the defendant had employed a contractor to execute the works, and had not interfered in the mode of executing the contract: On appeal, a new trial was ordered with costs.

THIS was an action in the Whitechapel County Court against the owner of land adjoining the plaintiff's house for negligently excavating his ground so that the plaintiff's wall, &c., had fallen down, and also to recover for certain bricks carried away from the plaintiff's premises. It appeared that the defendant had

employed a contractor to execute the works, and had not interfered in the mode of executing the contract. On the trial before *Manning*, S. L., the jury were directed that the defendant was liable for the negligent excavation and for the carrying away the bricks, and the plaintiff obtained a verdict of 20*l*. damages, and 3*l*. for the bricks, whereupon this appeal was presented.

Bagley, in support, cited *Reedie v. London and North Western Railway Company*, 4 Exch. R. 244; *Knight v. Fox*, 5 Exch. R. 721; *Peacock v. Rowland*, 13 Com. B. 182; *Cuthbertson v. Parsons*, 12 Com. B. 304.

Edgar for the respondent.

The Court said, that in accordance with the decision of *Reedie v. London and North Western Railway Company*, there must be a new trial, with costs.

Rowberry v. Morgan. May 10, 1854.

COMMON LAW PROCEDURE ACT.—ISSUE OF FI. FA. ON NON-APPEARANCE TO WRIT SPECIALLY INDORSED.

The time for pleading in an action commenced by writ specially indorsed under the 15 & 16 Vict. c. 76, s. 25, expired on Feb. 18, and the extra eight days under s. 27 on the 26th, which fell on a Sunday. The plaintiff signed judgment and issued execution on the 27th: A rule was discharged, with costs, to set aside the execution and all subsequent proceedings.

THIS was a rule nisi obtained on April 25 last, to set aside, with costs, a writ of *fi. fa.* and all subsequent proceedings, on the ground of irregularity. It appeared that the time within which the defendant was to appear expired on Feb. 18 last, and the extra eight days on the 26th, which fell on a Sunday. The plaintiff signed judgment on the Monday morning, and issued a *fi. fa.* thereon.

By the 15 & 16 Vict. c. 76, s. 27, it is enacted, that "in case of non-appearance by the defendant where the writ of summons is endorsed in the special form hereinbefore provided, it shall and may be lawful for the plaintiff" "at once to sign final judgment," "and the plaintiff may upon such judgment issue execution at the expiration of eight days from the last day for appearance, and not before," and the 174th rule of Hilary Term, 1853, directs that "in all cases in which any particular number of days, not expressed to be clear days, is prescribed by the rules or practice of the Courts, the same shall be reckoned exclusively of the first day, and inclusively of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, Good Friday, or a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusively of that day also."

Willes showed cause against the rule, which was supported by *Huddleston*.

The Court said, that the rule must be discharged, with costs.

The Legal Observer,

AND

SOLICITORS' JOURNAL.

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SATURDAY, JUNE 3, 1854.  
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JOINT-STOCK TRUST COMPANIES.

PROGRESS OF THE SOUTH SEA AND EXECUTOR AND TRUSTEE COMPANIES' BILLS.

THE Select Committee of the House of Lords, to whom these Bills were referred, met on Wednesday, the 24th May. The Duke of Buccleuch was in the Chair, and the following Peers were also present:—the Earl of Lonsdale, Lord Brougham, Lord St. Leonards, and Lord Overstone. The case of the South Sea Company was opened by Mr. Rolt at great length. He contended that a company for administering private trusts was required for the convenience of the Public, and that the South Sea Company was peculiarly adapted to supply the want. He alleged that responsible trustees were difficult to procure, and that the necessity of procuring new trustees in consequence of deaths and retirements was attended by inconvenience, expense, and delay. He urged also that individual trustees were liable to failure and often committed breaches of trust. He combated the objections stated in the Petition of the Incorporated Law Society regarding the unfitness of a board of directors to execute family and other private trusts. Having stated the grounds on which he contended that the preamble of the Bill was proved, and that legislation was necessary to remove the evils complained of,—he went through the clauses under which the plan is to be carried into effect, and particularly those for the security of the trust funds and the due keeping of accounts,—on which many doubts and difficulties were suggested by members of the Committee, and especially by the Law Lords. The learned counsel, on all these points, professed the entire willingness of his clients

to alter the Bill in any mode, and to any extent, that their Lordships might deem proper.

After some formal proofs, three *Bank Directors* were called, who stated they had heard of breaches of trust, but as the Bank did not take cognizance of trusts, they were not personally acquainted with the facts. They inferred where two or more persons held stock, that it was trust property; they admitted that where the stock stood in the names of *three* trustees, they knew of no cases of fraud, but there were some instances in which complaints were made of improper dealing with trust stock, where *two* trustees only were the holders of it. In 30 years one of the Directors had heard of eight complaints of that kind.

We may observe, that the Bank would, of course prefer that a joint-stock company should hold large amounts of stock, instead of numerous individuals with comparatively small sums. The Directors and their officers and clerks would thus have less trouble and probably less risk of mistake. The Directors who have their own mercantile affairs to transact, as well as the Bank business, would no doubt gladly escape from the *gratuitous* duties of private trustees; and they consequently spoke in favour of a company which would enable them to decline trusteeships and refer the applicants to the company. They stated some instances in which trustees, and others in which the *cestui que trusts*, had sustained loss, delay, and expense; but on cross-examination, it appeared that if there were failures of individual trustees so there were of joint-stock companies; and in litigated cases there must be the same course of proceeding, whether the trustees were a body of Directors or a few private individuals.

Mr. Franks, the *Deputy Governor* of the company, was also examined, and he described the intended mode of executing the trusts, the constitution of the board of management, the anticipated extent of business, and the profit to be derived from it. He expected that they would have trusts to the extent of 10,000,000*l.* annually, that they would probably require one per cent. on the gross amount of the property; that the expense of the establishment would be about 5,000*l.* a year; and that the shareholders, in addition to the interest derived from the guarantee fund, might receive one per cent. out of the profits. On cross-examination, it appeared that the details of the scheme were in a very unsettled and unconsidered state. The witness saw no difficulty in undertaking any kind of trusts, whether of large landed estates, or any other class of business.

The Select Committee again met on Monday, the 29th May, when Sir *John Patteson* was examined in support of both Bills, and particularly of the *Executor and Trustee Bill*,—stating his opinion to be in favour of such institutions if a competent board of directors could be induced to attend *personally* to the duty, but if it were delegated to paid officers he should not approve of the plan. He stated the case of a relative who had lost a very large sum of money as a trustee, and had heard of difficulties in procuring responsible and competent trustees.

Mr. *Selwyn* appeared as counsel for the Incorporated Law Society, and addressed the Committee at considerable length. He urged the following and other objections against the Bills:—

1st. The alteration of the rule of law that trustees shall not be placed in a situation in which their duties and their interests conflict; that whilst they would be bound to execute the trust at as little expense as possible in favour of the parties beneficially interested, their interest would induce them to obtain as large a profit as possible out of the trust funds to divide amongst the shareholders by whom they were elected, and the danger was, that if the present board of directors did not make a good dividend, they would be displaced at the next annual meeting to make room for less scrupulous persons.

2nd. It was proposed to abrogate another rule of law, by which trustees were personally responsible for their acts and deeds to an unlimited extent. Here it was proposed that not only the company at large

should be responsible only to the extent of their guarantee fund and other property, but that the directors should incur no personal responsibility whatever.

3rd. That although Courts of Equity allowed a remuneration to trustees where it was expressly provided for in the will or settlement,—in the absence of such express provision, no allowance could be made to a trustee for the employment of his time, or for his trouble or exertions in the affairs of the trust.

4th. That the holding of estates in trust by corporate bodies had been declared inexpedient by the legislature, for by the *Municipal Corporations' Act* property held for charitable purposes was directed to be conveyed from such corporations to individual trustees. Although the motive for this enactment was a political one, in order to prevent corporations from exercising an influence over tenants or others employed in the trust affairs, the same objection would apply to a joint-stock trust company, if they should have the management and control of large estates or other property, necessarily carrying with it considerable influence in public affairs.

5th. That if their Lordships should be of opinion that the principle of the Bill ought in any respect to be adopted, it should be carried into effect by a public and not a private Bill, and there was no reason for giving a preference to the South Sea Company, originally established to carry on trade in the South Sea fisheries.¹ If this Bill were passed, all the insurance and many other companies would be entitled to similar powers.

6th. The main point in support of the Bill was, that the company would secure *certainty* from the losses they now sustain by the malversation of individual trustees. On the other hand, it was contended that those cases were few in number and did not justify a new law, and that the frauds, failures, neglect, and mismanagement of public companies, were quite as numerous as those of individual trustees, and in case of failure, the extent of mischief would be enormous. Indeed, the winding up of a joint-stock trust company would be attended with incalculable mischief. The accounts of all the trusts must be taken before the parties entitled could be paid, and there would be the expense of transferring every separate trust to new trustees.

¹ It appears they were also engaged in the slave trade.

The learned counsel adverted to various other points connected with the duties of trustees, and the difficulties which a board of directors would have to encounter, in the proper management of the infinite variety of trusts which might come into their hands.

In opposition to the Bill, Mr. *Henley*, the member for Oxfordshire, late President of the Board of Trade, was examined. He stated he had been a trustee in numerous instances for many years. He rarely experienced any difficulty in carrying those trusts into effect; changes of trustees were seldom necessary; competent persons were readily found to undertake trusts, and the expense of new trustees was small. He thought a board of directors could not efficiently enter into all the details of private trusts, and that they were unfit to discharge the various duties required.

Mr. *Kinderley*, the President of the Incorporated Law Society, was next examined, and stated that he and his partners were chiefly engaged as solicitors in trust affairs. He had been in practice for 23 years, and was not aware of any difficulty in procuring competent persons of large property to undertake trusts. He believed that the *cestui que trusts* were fully as secure, under the present arrangements, as they would be by the proposed guarantee fund, in lieu of the unlimited responsibility of the existing trustees.

Mr. *G. B. Gregory* was also examined, and proved several instances of the failure of joint-stock banking and other companies, occasioned by the speculations and indiscretion of the several boards of directors, to an enormous amount. He also deposed to the management of trusts of large estates by private trustees who gave their personal attention to, and superintendence of, the various affairs of the trust.

Mr. *Arthur Morgan* was also called, as one of the proprietors of the South Sea Company, who, on behalf of himself and many other proprietors, dissented from the company's undertaking trust business and delaying the winding up of their own affairs and the payment of the proprietors of the stock.

Thus the case stands upon the evidence *pro* and *con*, the substance and effect of which we have endeavoured fairly to state. We cannot conceive that the Committee will report in favour of these alterations of the Law in a private Bill. It is probable they will expunge the trust clauses in the

South Sea Company Bill, and report altogether against the Executor and Trustee Bill. If they should not reject the principle *in toto* of such projects, it may be presumed they will come to the conclusion that the object should be effected by a *public* Bill, in which general rules for the constitution and management of such companies may be laid down for the security of the Public (and which are not provided in these Bills), and the Board of Trade authorised to examine into applications for charters of incorporation in conformity to such general regulations.

We understand that already several life insurance companies have declared their intention, if these Bills should be passed, to apply for similar powers; and no doubt the several insurance offices, whose boards of directors consist equally of barristers and solicitors, would be at least as competent as the South Sea Board to administer trusts and executorships; and most of them are already in possession of a capital of sufficient amount to constitute a guarantee fund. It appears that the Bank of England at one time contemplated accepting trusts, and the joint-stock banks and numerous other companies throughout the country might also compete for this new branch of business. But we insist that a numerous and fluctuating board of directors are radically incompetent, effectually and properly, to discharge the duties applicable to private trusts. The sound and sensible rule proposed by Sir John Patteson, that trustees should *personally transact the business*, cannot be carried out. The directors, for the most part, will be uncertain in their attendance; and old members of the board will be retiring and new ones coming in; so that the theory of a continuous body of trustees is a practical fallacy.

Interested motives have been ascribed to the Law Society acting on the part of their brethren; but the probability is, that in many respects litigation would be increased, and at all events the joint-stock company's solicitor would only represent the trustees. The *cestui que trusts*, tenants for life, reversioners, remainder-men, legatees, annuitants, mortgagees, creditors, lessees, and all other persons having claims or interests in the trust would be represented by their respective solicitors. Moreover (as the *Law Review* held out), testators or grantors might direct that their own solicitors should be employed whenever legal advice and assistance are required. Nor is it to be overlooked that as wills and settlements are pre-

pared by the Profession, neither the Bar nor the Solicitors will be inclined, except in very rare cases, to advise their clients to nominate these joint-stock companies as their executors and trustees.

Another meeting of the Select Committee took place on Thursday, the 1st June, when the following witnesses were examined:—

Mr. *Bell*, of the Imperial Insurance Company, who approved of the measure; three merchants from Cape Town who described a trust society there with five directors; Mr. *Bellenden Ker*, who prepared the South Sea Bill and approved of its principle, but admitted that several clauses were defective; and Mr. *Headlam*, who deposed in favour of the plan.

Mr. *Selwyn* addressed the Committee on the further evidence, and in opposition to the Executor and Trustee Bill; Mr. *Hope Scott* replied on both Bills; and their Lordships intimated their intention of taking both cases into their consideration, on Saturday the 3rd instant.

STAMP DUTIES BILL.

Bills and notes.—It is intended by this Bill to alter the amount of the stamp on inland bills and notes, and to extend the enactment to foreign bills.

Foreign bills.—*Adhesive stamps.*—The duties by this Act granted in respect of bills of exchange drawn out of the United Kingdom shall attach and be payable upon all such bills as shall be paid, indorsed, transferred, or otherwise negotiated within the United Kingdom wheresoever the same may be payable, and the said duties shall be denoted by adhesive stamps, to be provided by the Commissioners of Inland Revenue for that purpose, and to be affixed to such bills as hereinafter directed; s. 3.

The holder of any bill of exchange drawn out of the United Kingdom, and not having a proper adhesive stamp affixed thereon as herein directed, shall, before he shall present the same for payment, or indorse, transfer, or in any manner negotiate such bill, affix thereon a proper adhesive stamp for denoting the duty by this Act charged on such bill; and the person who shall indorse, transfer, or negotiate such bill shall, before he shall deliver the same out of his hands, custody, or power, cancel the stamp so affixed by writing thereon his name or the name of his firm and the date of the day and year on which he shall so write the same, to the end that such stamp may not be again used for any other purpose. Penalty of 50*l.* for negotiating such a bill without a stamp affixed or neglecting to cancel such stamp; s. 4.

Bankers' drafts.—Unstamped drafts on bankers not to be circulated beyond 15 miles of the banker on whom drawn, under a penalty of 50*l.*

17 Geo. 3, c. 30, so far as it extends to drafts on bankers repealed; s. 7.

Receipts.—By the Act of last Session, c. 59, a stamp duty of 1*d.* was granted and imposed upon any receipt or discharge given for or upon the payment of money amounting to 2*l.* or upwards, and doubts are entertained as to the receipts to which the said duty extends: it is therefore proposed to enact, that the said last-mentioned duty shall be deemed to extend to and be payable upon every receipt or acknowledgment given for any sum of money of the amount aforesaid, whether such money shall be paid or received in discharge or on account of any debt or legal obligation or other claim or demand, or as a voluntary or gratuitous gift, or under any other circumstance whatever, subject, nevertheless, to the exemptions from the said duty expressly contained in the several Acts in force; s. 8.

Under certain Acts relating to stamp duties, letters by the general post acknowledging the safe arrival of any bills of exchange, promissory notes, or other securities for money are exempted from the stamp duty granted and imposed on receipts or discharges given for or upon the payment of money: it is now proposed that this exemption shall be repealed; s. 9.

Receipts for money paid to the Crown exempted from stamp duty; s. 10.

Conveyances.—By the 13 & 14 Vict. c. 97, reduced rates of stamp duty were granted and made payable under the respective heads or titles of "Conveyance, Duplicate, or Counterpart" and "Progressive Duty" in the Schedule to that Act; and by the 16 & 17 Vict. c. 63, stamp duties were granted and made payable upon conveyances, charters, dispositions, and contracts described under the head or title of "Conveyance" in the Schedule, but no provision is made for charging the said conveyances, charters, dispositions, and contracts with the said progressive duties, or for charging the duplicates or counterparts thereof with the said reduced duties. It is now proposed, that the respective stamp duties granted and made payable under the several heads or titles of "Duplicate or Counterpart" and "Progressive Duty," in the Schedule to the 13 & 14 Vict., and the provisions and regulations relating thereto, shall be, and the same are hereby respectively, made payable upon and in respect of, and deemed to apply to, the several conveyances, charters, dispositions, and contracts described under the head or title of "Conveyance" in the Schedule to the Act of last Session, cap. 63, which shall be made after the passing of this Act, and any duplicate or counterpart thereof; s. 11.

Relief to persons who have made duplicates of such conveyances before the passing of this Act; s. 12.

The duty on conveyances for annual sums payable for lives to be calculated on the gross value; s. 13.

Deeds made for several valuable considerations to be chargeable in respect of each; s. 14.

The Commissioners, before assessing the duty upon any deed, may require proof that the facts upon which the duty depends are truly stated; s. 15.

The affidavit not to be used for any other purpose; s. 16.

Contracts to serve as artificers, servants, and labourers in the colonies exempted from stamp duty; s. 18.

Allowance of 7½ per cent. on the purchase of stamps not exceeding the rate of 1s. duty for drafts, bills, and notes amounting to 5l.; s. 19.

No charge to be made for paper on sale of bill or note stamps where the rate of duty does not exceed 1s.; s. 20.

The alterations in the amount of stamps on bills and notes are stated in the Schedule to the Bill.

TESTAMENTARY JURISDICTION BILL.

PETITION OF THE ATTORNEYS AND SOLICITORS OF CHESTER.

THIS petition states, that the petitioners view with alarm the provision in the Testamentary Jurisdiction Bill, now before the House of Commons for transferring the whole of the original wills, wherever proved, to London.

"That in the event of a fire, or public disturbance, the whole of the wills forming the title-deeds to a great part of the whole property of the country, would be liable to be involved in common destruction, which while deposited in different registries could never be the case.

"That by the periodical transmission to London of copies of all wills and notes of the administration, proved and granted to the local Courts, together with copies of the local indexes, all uncertainty as to the Court in which a grant had been made would be removed, and every information respecting it would be obtained with the same facility (or greater, as the indexes would be classified according to the residence of the deceased) as if the grant itself had been made in London.

"The petitioners submit that the original wills forming title-deeds to so large a proportion of the property of the country, ought to remain in the custody of the local registrars, for the more easy inspection of those interested under them who are generally speaking the only persons likely to require a personal inspection, and are usually resident in their immediate neighbourhood.

"That if the peculiar jurisdictions throughout the country be abolished, and the other jurisdictions consolidated so as to leave in each diocese a district attached thereto one Testamentary Court, and if the law of *bona notabilia*, which alone causes the present inconvenience, be abolished, all doubts of the validity of the grants of probate or administration would be removed, great expense saved, the course to be adopted rendered simple and uni-

form, and the true interests of the public consulted.

"The petitioners view the proposed measure with considerable fear of the injurious effects likely to be produced to the country at large by the withdrawal from the provinces of so large a portion of the capital at present circulated therein by the local practitioners, for the sole benefit of the London practitioners, which must, as they conceive, be the result of the limitation in all cases of the local jurisdiction to grants where the effects are under 1,500l.; and that, inasmuch as the grants in all cases must be perfected in London, and the course of proceeding does not vary in the slightest degree with the amount of effects, there does not appear any reason for the restriction but that of abstracting the most valuable portion of the business of the provinces for the benefit of the metropolis.

"That it should also be borne in mind that the cases above 1,500l. are likely to be attended with far less trouble and difficulty, as the parties where property is large almost always have recourse to professional assistance, and universal experience will attest the fact, that those cases in which the nicest points arise as to the validity of a will, or any portion of it, the appointment of executors and residuary legatees, &c., are those in which the property concerned is small.

"The petitioners therefore pray that the House will provide for the retention of all original wills within the district in which they are proved, and that executors and administrators may in all cases have the option of resorting to the local Court without reference to the amount of effects.

MORTMAIN BILL.

REASONS AGAINST THE RESTRICTION OF BEQUESTS OF PERSONAL PROPERTY.

It is proposed by the Bill to forbid bequests of personal property of any sort to charitable purposes except under the restriction—

1st. That the will is made *three months before death*.

2nd. That in a *month* after the making of the will the testator gives full notice of the bequest and its nature.

These provisions will prevent legacies to various valuable charities.

Up to the present time such legacies have been frequent, and open to no reasonable objection.

Bequests for religious purposes may be brought about by religious influence, and if they are esteemed pernicious may be restrained.

But there is no reason for confounding with them bequests of mere charity, whose only advocates are the testators own charitable impulses, and which neither in their origin nor their effect can be deemed pernicious.

Protection against undue influence is the object of the Bill: its effect will be to destroy

bequests unconnected with influence of any sort.

The impediments created by the Bill are such as charitable impulse is rarely active enough to overcome.

First, the will is to be made three months before death.

All those who postpone their wills—a very numerous class—until their last illness will be lost as benefactors to charity.

Those also who make their wills in health will be similarly lost as benefactors, if death should intervene within three months after they have made them.

No foresight can prevent this, and here there will be a testamentary intention defeated as well as a charity deprived.

A still greater evil, if possible, is the publicity imposed on the testator.

It will place the testator in the difficulty of having his object and intentions criticised.

And it may here bring about, in the form of importunity by those who have formed expectations at variance with the bequest, an influence which will be as undue as that which is sought to be corrected.

Again, a legacy once given, and the gift published, and perhaps gratefully acknowledged in the testator's lifetime, will be practically irrevocable.

At present, the alteration of such bequests in their amount, according to the varying of family circumstances, is very frequent; under the proposed publicity, a diminution of the bequest by subsequent will would be ungracious.

Few charitably inclined testators will like to come under such obligations as these.

Another evil is to be apprehended in the ignorance of testators that there is any restriction by law in disposing of their personal property, which has hitherto been understood to be the free right of every one, and the wishes of the testator may thus be seriously defeated.

There is nothing in the Report of the Committee of the Commons on the Law of Mortmain to justify this new system of publicity.

The Bill prescribes a notice, signed by the testator, declaring the bequest and the nature of it to the Charity Commissioners.

It is not too much to say, that a loss of nine-tenths of the bequests which have hitherto been received from those who in their lifetime have been connected with the most useful and important charities, is to be expected under such restrictions and conditions.

The loss will be deeply felt. For a very considerable portion of the funds, by means of which many important and useful charities have dispensed their aid to the sick poor and destitute, has hitherto been derived from legacies.

Nor did the Committee take any evidence, or express any opinion against the propriety of such bequests, which, as they are wholly spontaneous, should be wholly unfettered.

By confounding religious uses with what are purely charitable purposes, the Bill has sur-

rounded bequests for the latter with safeguards apparently intended to control the former.

And the stringency which may probably not suffice to hold the one in check will more than suffice to extinguish the other.

TAXES ON THE ADMINISTRATION OF JUSTICE.

LORD BROUGHAM'S PROPOSED RESOLUTIONS.

THE following were the resolutions proposed by Lord Brougham, embodying the principal statements made in the debate which took place on the 16th instant.

"1. That the number of suits brought in the County Courts during the years 1852 and 1853, was 959,695, or about 479,000 yearly, for sums amounting to above 1,494,000*l.* yearly, whereof above 859,000*l.* was recovered by judgments or paid into Court, besides the sums paid without any proceedings being had further than service of the plaintiff.

"2. That the fees or law taxes levied upon the suitors in the County Courts in the years 1852 and 1853, amounted to the sum of 523,303*l.*, or about 261,000*l.* yearly, being 37½ per cent upon the sums sued for, and 30¼ per cent upon the sums recorded by judgments or paid into Court; but as these are the average proportions, while in many cases the per centage is less, so in many cases it is greater, and thus sometimes the tax amounts to even more than the sums in dispute.

"3. That these taxes are applied to paying the salaries of the Judges and other officers of the Courts, the providing of Court-houses in the different parts of the country, and defraying the travelling expenses of the Judges and officers.

"4. That by the several Acts passed in the years 1825 and 1852 (6 Geo. 4, cc. 82, 83, and 84, and 15 & 16 Vict. cc. 73 and 87), the salaries of all the Judges and other officers¹ in the Superior Courts of Law and Equity were made payable out of the Consolidated Fund, and the fees or law taxes levied from the suitors in the said Superior Courts of Law were so far reduced in amount as little, if at all, to exceed 50,000*l.* since the last of these Acts passed, and no fees or taxes whatever are levied on the suitor to pay for the Court-houses, or Judges' lodgings, or other expenses of the Judges.

"5. That the fees or law taxes exacted in an undefended action in the County Courts,—that is, where the parties agree, and an order is made, or where the defendant does not appear—are the same as in a defended action; and those fees or taxes in an action for the sum of 20*l.* amount to 3*l.* 11*s.* 8*d.*; whereas, in an action brought in the Superior Courts for the like

¹ The Judges only, *not the officers*, are so paid.—Ed.

sum, where judgment is entered by default, the fees or taxes amount to 17s. only.

"6. That the number of suits brought in the County Courts has been increasing since their establishment; that 32,506 more were brought in 1852 than in 1851, but that in 1853 it was only 10,000 more than in 1852, and the actions for sums above 20l. fell from 13,006 (the average of 1851 and 1852) to 9,207 in 1853, owing, as appears, to the lowering of the fees or taxes in the Superior Courts, as well as the rules made for allowing more costs than are allowed in the County Court.

"7. That all taxes upon law proceedings are contrary to every sound principle, and of necessity work injustice and oppression, but that those which are imposed upon the suitors in County Courts are in an especial manner to be reprobated as falling upon the classes of the community the least able to bear the burden, and as obstructing the access to those Courts where alone the great majority of causes can be tried."

We shall take an early opportunity of further discussing this subject. It appears to be overlooked that the "Small Debts" Act, under which the new County Courts were established, superseded many hundred local Courts, including the Courts of Request, where small debts and demands were recovered at a very moderate expense; and the annual number of which was, we believe, not inferior to the plaints "tried" (as alleged) in the New County Courts.

Although the resolutions were withdrawn, on the Lord Chancellor's suggestion, it will be material to consider such part of them as relate to the County Courts, with reference to the inquiry now in progress before the County Court Commissioners.

LAW OF ATTORNEYS AND SOLICITORS.

SERVICE OF GRADUATE ARTICLED CLERK WITH SPECIAL PLEADER.

AN articled clerk took his B.A. degree at Oxford, on Jan. 14, 1850, and was articled for three years on Jan. 19 to his father, with whom he served for two years. He then came up to London and served eight months with his father's town agents, and then went to a special pleader for four months.

The Examiners had examined the applicant conditionally, but refused the certificate on the ground that the service to the special pleader was not good under the 6 & 7 Vict. c. 73, s. 7. On an application, a rule was made for liberty to the applicant to enter into further articles for a further term of four months, or such

other time as should be necessary to complete the three years' service pursuant to the Statute, and that on the completion of such service the present Examiners should be at liberty to issue their certificate of the fitness of the applicant to be admitted, upon his examination already had, without his being examined again,—the usual notices of admission being given. *Ex parte Earle*, 1 Lowndes & Maxwell, 180.

CAUSES OF THE UNPOPULARITY OF ATTORNEYS.

WE lately had occasion to notice the appeal made by an influential Member of the House of Commons—no less than the Chairman of the House when sitting in Committee—to the vulgar prejudice which long ago existed against lawyers, and which, though of late years abated, has evidently not ceased. So long as lawyers are the instruments by which vice and crime are punished, and so long as folly must seek protection against fraud and oppression, the attorneys must endure the abuse of those whom they bring to justice, whether in disgorging their fraudulent gains, or defeating their nefarious projects.

Mr. Warren, in his "Ten Thousand a Year," thus describes the grounds of the unpopularity of attorneys:—

"There will probably never be wanting those who will join in abusing and ridiculing attorneys and solicitors. Why? In almost every action at law, or suit in equity, or proceeding which may, or may not, lead to one, each client conceives a natural dislike for his opponent's attorney or solicitor. *If the plaintiff succeeds*, he hates the defendant's attorney for putting him (the said plaintiff) to so much expense, and causing him so much vexation and danger; and when he comes to settle with his own attorney, there is not a little heart-burning in looking at his bill of costs, however reasonable. *If the plaintiff fails*, of course it is through the ignorance and unskillfulness of his own attorney or solicitor! and he hates almost equally his own and his opponent's attorney! Precisely so it is with a successful or unsuccessful defendant. In fact, an attorney or solicitor is almost always obliged to be acting *adversely to some one* of whom he at once makes an enemy; for an attorney's weapons must necessarily be pointed almost invariably at our pockets! He is necessarily, also, called into action in cases when all the worse passions of our nature—our hatred or revenge, and our self-interest are set in motion.

"Consider the mischief which might be done on a grand scale in society, if the vast majority of attorneys and solicitors were not

honourable and able men! Conceive them for a moment, disposed every where to stir up litigation, by availing themselves of their perfect acquaintance with almost all men's circumstances—artfully inflaming irritable and vindictive clients, kindling, instead of stifling, family dissensions, and fomenting public strife;—why, were they to do only a hundredth part of what it is thus in their power to do, our Courts of Justice would soon be doubled, together with the number of our Judges, counsel, and attorneys—new jails must be built to hold the ruined litigants, and the Insolvent Court enlarged and in constant session throughout the year.

"But not *all* this body of honourable and valuable men are entitled to this tribute of praise. There are a few Quirks, several Gammons, and many Snaps, in the Profession of the Law—men whose characters and doings often make fools visit the sins of individuals upon the whole species."

[See the new edition of "Ten Thousand a Year," carefully revised, with Notes and Illustrations, vol. 1, p. 77.]

CONSTRUCTION OF STATUTES.

EQUITY JURISDICTION IMPROVEMENT ACT.

PRINCIPLES ON WHICH SALE DIRECTED OF MORTGAGED ESTATE, §. 48.

THE *Master of the Rolls* said,—“I apprehend that the Statute enabling the Court to direct a sale, intended to give the Court a very considerable discretion, in order to avoid the great delay and expense which are occasioned by foreclosure and redemption in a case where there is a great number of successive mortgages; and the Court will, upon the terms and according to the directions contained in the section, exercise that power in such a manner as not to operate injuriously or oppressively on any person interested. If, therefore, a sale of this property could now take place, as beneficially and profitably to the parties concerned, as by allowing the rents to be received, I should think it a proper case for the exercise of that discretionary power contained in the Act. But I should give liberty to the persons interested to bring before me any matters which might vary or alter my opinion, because they have not had the opportunity of so doing, in consequence of the cause being at issue before this Act came into operation. The power given to the Court, as I read it, is, at the instance of the first mortgagee, to direct a sale, if it should think fit, or at the instance of a second or any puisne incumbrancer, with the consent of the prior incumbrancer; or if they do not consent,

then upon ordering such sum of money to be paid into Court as the Court may think necessary to protect them. Assuming this to be, in other respects, a proper case to direct a sale, I think if the second mortgagees consented, and the third mortgagee paid into Court the amount of the first mortgage, then, as the first mortgagee will clearly have a security both on the proceeds of the sale of the estate and the money in Court, he would be perfectly safe.

“I do not consider that under this clause the Court would be induced to act oppressively, so as to dispossess a family of an old family estate. It is possible, also, that a life estate might not sell well, and that a mere estate *per autre vie* (which this would be) would not, if sold, be so productive for the benefit of the mortgagees, as the receipt of rents during the continuance of the lives.” *Hurst v. Hurst*, 16 Beav. 372.

LAW OF COSTS.

OF PETITION BY MASTER OF CHARITY FOR PAYMENT OF INCOME.

THE costs of a petition presented by the new master of a charitable corporation for payment of the income upon a fund in Court belonging to the charity, were directed to come out of the income and not out of the fund. *Attorney-General v. Smythies*, 16 Beav. 385.

SECURITY FOR COSTS.—REAL ESTATE IN THIS COUNTRY.—AFFIDAVIT.

A plaintiff resident in Scotland was possessed, as stated in the affidavit in answer to a rule calling on him to give security for costs, “of large landed and other estates” in this country, “of considerable annual value over and above all charges affecting the same.”

Crompton, J., said, “The possession of real property within the jurisdiction of the Courts here is sufficient answer to an application of this kind; but the affidavit must go further than the present one, and must show that the property is available for the purposes of an execution. My brothers *Patteson* and *Pearse*, in the passages of their judgments in the cases cited, put the exception to the general rule upon the true ground. In order to bring the plaintiff within the exception, it must be shown

¹ *Edinburgh and Leith Railway Company v. Dawson*, 7 Dowl. 573, 6, 7; *Kilkenny and Great Southern and Western Railway Company v. Fielden*, 6 Exch. R. 81, 6.

that the property possessed by him in this country is available property. As the present affidavit is sworn, I am not satisfied that the plaintiff has any available in England. The affidavit merely says, "that the plaintiff is possessed of large landed estates of considerable value," "over and above all charges affecting the same;" but they may, nevertheless, be wholly unavailable upon an execution. I think, therefore, the rule must be made absolute." *Swainborne v. Carter*, 1 Lowndes & Maxwell, 209.

POINTS IN EQUITY PRACTICE.

REDEMPTION CLAIM.—STATUTE OF LIMITATIONS.—LETTER FROM MORTGAGOR TO HIS SOLICITOR.

IN a claim by the trustees of a building society to redeem an estate mortgaged to the defendant, John Hobson, the Statute of Limitations (3 & 4 Wm. 4, c. 27) was set up. The *Master of the Rolls* said, "The letters written by Hobson to his own solicitor can, in no degree, affect his right to the benefit of the Statute as a bar to the claim of the plaintiff." See *Batchelor v. Middleton*, 6 Hare, 84; *Lucas v. Dennison*, 13 Sim. 584.

Stansfield v. Hobson, 16 Beav. 236.

PROPOSED LEGAL BENEVOLENT COLLEGE.

THE medical profession has lately nobly and liberally subscribed for a medical *benevolent* college, which is now in course of erection on Epsom Downs, at a cost of some 20,000*l*.

Perhaps you will permit me to throw out a hint of the practicability of a similar institution for the members of the *Legal Profession*. I by no means consider it impossible; on the contrary, looking at the number, wealth, and liberality of the Profession, I entertain very little doubts of its ultimate success.

A SEPTUAGENARIAN ONE, &c.

[We are happy in being able to inform our Correspondent, that a scheme of this kind has been long contemplated, and that so long as eight or ten years ago we saw a prospectus of it in MS., the publication of which was delayed for a very cogent reason, which has now been removed, and it is expected that it will shortly make its appearance under the powerful auspices of the Incorporated Law Society.—ED.]

THE GENERAL RECORD REPOSITORY.

CONNECTED with the proposed New Courts and Offices in the vicinity of the Inns of Court, we may not inappropriately refer to the important edifice, a large portion of which has just been completed, on the Bolls' Estate. The intended great central street, running from Cheapside to Long Acre, and thence to Piccadilly, will pass on the north side of the New Record Building, and continue thence along Carey Street, and thus form one of the chief approaches to the new Courts. In the Report, just printed, of the Record Keeper, we find the following passages relating to the progress of the Repository, and which will be interesting to most of our readers who look forward to the projected improvements in and near the Inns of Court.

"The progress of this building, commenced in pursuance of the vote taken in 1850, has been stated in preceding Reports (Eleventh Report, 3, s. 1; Twelfth Report, 3, s. 1; Thirteenth Report, 3, s. 1; Fourteenth Report, 3, s. 1). The shell of the building having been completed about the month of July, 1853, it appeared to the *Master of the Rolls* that it would be highly desirable that one room of the Record Repository should be fitted up with models of the racks or presses intended for the Records, and also of the galleries and other means of access to the same, all of which are to be constructed of iron. This proceeding was considered expedient, inasmuch as there are many questions connected with the consideration of objects of this class which neither verbal descriptions, nor even drawings, can render sufficiently intelligible, and the models being submitted bodily to the examination of the officers of the establishment, they will better be able to form a judgment thereon. Application was therefore made, 15th August, 1853, to your Majesty's Board of Works, requesting that a room should be fitted up accordingly. When the presses are completed, the removal of the records from the present repositories will take place—a task not light or easy under any circumstances, but peculiarly difficult with respect to the records in the repository at the Carlton Ride. These records belong principally to the Courts of Common Law, and are considerably resorted to for use and consultation; and it will be absolutely needful that the removal be conducted so alertly and systematically that no more than one clear day should elapse during which the records should be inaccessible to the searcher. Your Majesty's Commissioners of Works are desirous of retaining possession of the Carlton Ride for building purposes, and every effort will be made by this department to comply with their wishes and directions."

EXAMINATION AT THE INNS OF COURT.

Held at Lincoln's Inn Hall, on the 22nd, 23rd, and 24th days of May, 1854.

THE Council of Legal Education have awarded to—

F. W. Everitt Stiffe, Esq., Student of Lincoln's Inn, a Studentship of Fifty Guineas per Annum, to continue for a period of Three Years.

John Westlake, Esq., Student of Lincoln's

Inn, and *George Hunter Cary, Esq.*, Student of the Inner Temple, Certificates of Honour, as having passed the next best Examinations.

And the Honourable *Thomas Charles Bruce*, Student of the Inner Temple, a Certificate that he has satisfactorily passed a Public Examination.

By Order of the Council,

(Signed) *EDWARD RYAN.*

(*Chairman pro tem.*)

Council Chamber, Lincoln's Inn,

May 29, 1854.

ADMISSION OF ATTORNEYS.

Queen's Bench.

Trinity Term, 1854, added to List pursuant to Judges' Orders.

Clerks' Names and Addresses.

To whom Articled, Assigned, &c.

Mason, Richard, 13, Belgrave Street, Argyle Square; and Farnham
Smith, William Sidney, 7, Gloucester Terrace, Hyde Park

W. J. Hollest, Farnham.
A. W. Grant, King's Road; F. A. Grant, King's Road, Bedford Row.

Last Day of Trinity Term, pursuant to Rule of Hilary Term, 1853.

Aldham, Robert Huxley, 14, Myddleton Sq ; and King's Lynn
Battye, John, 25, Granville Square, Middlesex; and Huddersfield
Chambers, Robert Phillips, 7, Clement's Inn; 6, South Square; and 62, Swinton Street
Chambers, William, 12, Wakefield Street, Regent Square; and Denbigh
Croome, Alexander Swayne, Rectory, Bethnal Green
Head, John Henry Horsford, 17, Bridgwater Square, London
Hopkins, John, 53, George Street, Hampstead Road; Lincoln's Inn Fields
Hopkinson, Joseph, 7, Goulden Terrace, Barnsbury Road; and Nottingham
Jones, Henry, Colchester
Palmer, Gillies Charles, Grantham
Parker, William, Greenwich
Rhodes, Arthur, Muswell Hill
Rudyard, Frederick Colville, Macclesfield
Voules, Henry Edmund, 12, Alfred Place, Alexander Square, Brompton
Welch, Charles, 4, Manchester Street, Argyle Square, Middlesex
Wingfield, Henry G. Eden, Seething Wells, Kingston-on-Thames
Woodward, John Hawkes, 3, Harcourt Buildings, Inner Temple; and Pershore

B. R. Aldham, King's Lynn.
James Crosland Fenton, Huddersfield.
E. Mullins and R. Paddison, 13, Tokenhouse Yard.
Richard Williams, Denbigh.
J. Starmer, Wainfleet.
Robert Thomas Head, Exeter.
E. E. Whitaker, 12, Lincoln's Inn Fields.
R. Dufty, Nottingham; C. Butlin, Nottingham.
Francis Gibbs Abell, Colchester.
William Ostler, Grantham.
R. C. Parker, Greenwich.
H. Masterman, Bucklersbury.
Thomas Parrott, Macclesfield.
A. J. Lane, Essex Street; T. Clark, Dean's Court, Doctors' Commons.
J. J. Brettell, 2, Staple Inn; T. M. Wilkin, 3, Furnival's Inn.
Jonathan Weymouth, 2, Temple Chambers, Fleet Street.
W. Wilton Woodward, Pershore.

Notice of Admission for the last day of Trinity Term, 1854, to be added to the List pursuant to Judge's Order.

Beale, Samuel Martin, 39, Argyle St., King's Cross; and Worcester

J. Stallard, Worcester.

Renewed Notice of Admission for the last day of Trinity Term, omitted in former List.

Lomax, Richard, 3, Bolton St., Piccadilly

Alfred Grundy, Bury, Lancaster.

SELECTIONS FROM CORRESPONDENCE.

FUSION OF LAW AND EQUITY.

Our learned Correspondent "A Barrister," appears to be shocked that we do not go as fast and far as some of our contemporaries in the march of Law Reform, and particularly in the "fusion of Law and Equity." We will endeavour at an early opportunity to discuss this matter; and in the meantime think "A Barrister" should be satisfied at the progress which has been recently made, by enabling a Court of Law to extract the evidence required without the expensive aid of a bill of discovery in Chancery; and imposing the duty on Courts of Equity to decide a question of law without the delay of sending a case to the other side of Westminster Hall.

CHARGE FOR COPIES.

A client requires of a solicitor a plain copy of a deed for use, not being an attested copy. Is the solicitor entitled to 4d. or 6d. per folio? A CLERK.

[It is clear that the proper charge is 4d. per folio.—ED.]

RENEWAL OF CERTIFICATES.

Queen's Bench.

On the 3rd of June.

Preston, John, Kirkby, Lonsdale.

On the 16th day of June.

Baumont, Henry Barber, Putney.

Burrell, Edward Montague, Compton Road, Canonbury.

Cook, George, 17, Allen Street, Lambeth.

Corbett, John Fletcher, Worcester.

Cowley, George Molini, Nottingham.

Elworthy Henry John Rice, of 22, Roxburgh Terrace, Haverstock Hill, and Hampshire Terrace.

Gregory, F. Maze, 16, Grove End Road, St. John's Wood; and Ramsgate.

Jackson, Francis, 16, Fludyer Street, Westminster; and Grenada.

Johnson, Ed., jun., North Runcion, nr. Lynn.

Johnson, Marcus Henry, Wallington.

Jones, William, Manchester; Pantydkin; and Wrexham.

Looker, John, Oxford.

Monckton, Wm. Charles, 13, Crawley St.;

Thavies Inn; Buckingham St.; and Portsea.

Partridge, Joseph Arthur, Mount Vernon, near Stroud.

Padmore, H., 21, Pomona Place, Ellbrook; St. Helier's; and Eaton Cottages.

Robertson, William, Liverpool.

Rice, Henry Edridge, 24, Notting Hill Sq.

Richardson, Henry Francis, 6, Westbourne Park Place, Baywater.

Rolls Court.

14th June.

Barber, Wm. Hen., 25, Surrey St., Strand (postponed from Easter Term last).

RE-ADMISSION.

On the last day of Michaelmas Term.

Fuller, Joseph Bury, 13, Irving Street, Birmingham.

NOTES OF THE WEEK.

QUEEN'S BENCH.—ABSENCE OF COUNSEL.

THE Lord Chief Justice has intimated, that during the remainder of the Term the cases before the Court would be called on in their order, and would be proceeded with, unless a reasonable excuse were given for the absence of counsel—such as being engaged in the conduct of a cause in another Common Law Court. But absence before a *Parliamentary Committee* would be no excuse.

TRINITY TERM EXAMINATION.

We understand that the Examiners for this Term are Sir Fortunatus Dwaris, Mr. E. S. Bailey, Mr. W. Strickland Cookson, Mr. E. Lawford, and Mr. W. Sharpe. Notices of examination were given by 115 Candidates, but 94 only have completed their testimonials. Tuesday next, the 6th instant, is the day fixed for the examination, and we hope the applicants are well prepared for the ordeal.

In Trinity Term, last year, no less than 23 were rejected, and a similar number in Hilary Term, this year. It seems generally admitted that, although some of the questions are occasionally difficult, the majority of them ought to be satisfactorily answered by any one entitled to act as an attorney or solicitor. In the only case in which an appeal was argued before the three Judges under the Rule of Court, it seems that not the slightest intimation was given by the Judges that the examination was conducted too strictly. On the contrary, if we are not mistaken, the Judges expect that whatever leniency might be proper some years ago, the time has arrived when a considerable amount of knowledge in the principles of the Law and the practice of the Courts should be shown by the examination in order to entitle the party to admission on the Roll.

It is proved every Term, by the papers of many of the candidates, that ten or twelve of the fifteen questions in the departments of Common Law, Equity, and Conveyancing, can be satisfactorily answered; and therefore most of the instances of failure must be owing, to sheer idleness and inattention to the business and duties of the attorney's office. It may be that in some cases the want of success has been occasioned by illness, but these we conceive are few in number. Let it be remembered, that in the due preparation for these examinations, the student will acquire a solid amount of knowledge that will be of the greatest importance in his future career.

NISI PRIUS SITTINGS, QUEEN'S BENCH.

Mr. Justice Wightman gave notice, that the Queen's Bench Sittings at Nisi Prius during the present term, would be held in the Lord Chancellor's Court.

EXCHEQUER CHAMBER.

The Court will hear errors from the Exchequer the day after Term.

LAW APPOINTMENTS.

Thomas Emerson Headlam, Esq., M.P., has been appointed Chancellor of the Diocese of Ripon, in the room of the Venerable Archdeacon Headlam, deceased.

The Queen has been pleased to appoint, Alan Ker, Esq., to be Chief Justice for the Island of Nevis.—From the *London Gazette* of 30th May.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

Gann v. Gregory. May 3, 25, 1854.

WILL.—ERASURES AND ALTERATIONS.—PROBATE WITH FACSIMILE.—WILLS' ACT.

Probate was granted by the Ecclesiastical Court with a facsimile will containing certain erasures, alterations, interlineations, and obliterations in respect of legacies, &c., therein contained: Held, that their decision was conclusive as to the correctness of the probate, and that the testator must be concluded to have, prior to the execution, have drawn his pen through the gift of such legacies, &c., and an appeal was allowed from Vice-Chancellor Stuart and exceptions allowed to the Master's report including such legacies.

THIS was an appeal from Vice-Chancellor Stuart. It appeared that the testator had left a will written on three pages of paper, and that on the second page there were some alterations, erasures, and interlineations, and obliterations, which were set out in the facsimile of the will annexed to the administration granted by the Ecclesiastical Court to the defendant, Mrs. Gregory. A reference had been directed, in this suit by the legatees, to the Master for an account of the legacies and annuities, and by his report a schedule was given thereof including certain which were struck through. Exceptions were taken to this report, but were overruled by the Vice-Chancellor Stuart upon the authority of *Cooper v. Bockett*, 4 Moore, P. C. 419, and the 1 Vict. c. 26, s. 21.

Bacon and W. P. Murray in support of the appeal, citing *Mence v. Mence*, 18 Ves. 348; *Wigram* and *Berkeley*, contra.

The Lord Chancellor said, that although the case of *Cooper v. Bockett* established that if it were not shown an erasure was prior to the execution of the will it must be presumed to have been made afterwards, and the will be proved without the erasure, yet here the Ecclesiastical Court had granted probate with all the erasures, &c., in the will, and their decision was conclusive as to the correctness of the probate. The testator must therefore be concluded to have originally intended to give certain legacies, but to have, prior to the execution of the will, drawn his pen through the gift of such legacies, and to have not intended to bequeath the same. The appeal would therefore be allowed.

Lords Justices.

In re Limond. May 26, 1854.

TRUSTEES' ACT, 1850.—APPOINTMENT OF NEW TRUSTEES ON DEATH AND ON LUNACY.

An order was made on petition in the lunacy and under the 13 & 14 Vict. c. 60, for the appointment of a new trustee in the stead of one of unsound mind, although not so found by commission, and also of another who had died—on the affidavit of two of the cestuis que trustent approving of the petition and that the others were in India.

THIS was a petition in the lunacy and under the 13 & 14 Vict. c. 60, for the appointment of a new trustee of a marriage settlement in the place of one of unsound mind, although not so found by commission, and also in the place of another who had died. Two of the cestuis que trustent who were in this country filed an affidavit approving of the petition, and the others were in India.

A. Gordon in support.

The Lords Justices made the order as prayed.

Wheatley v. Barstow. May 29, 1854.

EXAMINATION OF WITNESSES UNDER NEW PRACTICE.—ORDER WHERE WITNESS IN DANGEROUS HEALTH.

An order was made to take the evidence orally according to the new practice in a suit instituted before the new Chancery Acts came into operation, with the exception of one of the witnesses and a defendant, who was subject to a disease of the brain, and whose life might be endangered by the excitement consequent on an examination by counsel, and he was directed to be examined on interrogatories, but without prejudice to the right of either party to examine orally at the hearing.

IN this suit, which had been instituted before the new Chancery Acts came into operation, the Vice-Chancellor Stuart had refused a motion to take the evidence orally under the new practice instead of by interrogatories.

Goldsmith in support of the appeal; Speed, for the other side, did not oppose, except as to one of the witnesses, who was a defendant, and had answered the original and the amended bill, but was subject to a disease of the brain, and whose life might be endangered by the excitement consequent on an examination by counsel.

The *Lords Justices*, in making the order for the examination of the witnesses, except the one in question, according to the new practice, directed that the examination and any cross-examination of such witness according to the old practice should be without prejudice to the right of either party at the hearing to apply for his oral examination and cross-examination by the Court.

Master of the Rolls.

Freer v. Freer and another; Shield v. Same.
May 29, 1854.

ADMINISTRATION CLAIMS.—CREDITOR AND HEIR-AT-LAW.—COSTS.

Separate claims were filed for the administration of the estate of an intestate by his heir and by a creditor: an order was made for an administration on the two claims, the heir to have the conduct of the proceedings. The defendants, who were the administrators, had appeared by separate counsel, held that one set of costs could only be allowed.

THESE were administration claims filed by the infant heir and by a creditor of Mr. Wm. Freer, who had died intestate. It appeared that a claim was necessary, as there were real estates subject to mortgages, and that an application at Chambers for the usual administration order by the heir had been unsuccessful. The defendants, who had taken out letters of administration, appeared by separate counsel. *re Berkeley, Baggallay, and F. Webb* for the several parties.

The *Master of the Rolls* said, that the order would be made on the two claims, but that the heir would have the conduct of the proceedings—the administrators to have only one set of costs.

Vice-Chancellor Kindersley.

In re Alexander's Trust. May 26, 1854.

TRUSTEES' ACT, 1850.—JURISDICTION OVER JUDICIAL FACTOR IN SCOTLAND.—INSURANCE POLICIES.

The judicial factor, appointed in Scotland to a testator upon the refusal of his executors to act, held not within the 13 & 14 Vict. c. 60, s. 27, and the Court refused to declare him a trustee for the assignees of certain policies of insurance in this country, or to appoint a trustee to assign; but an order for payment of the dividends to the assignees was made—the insurance office entering the assignees' names in their books.

THIS was a petition under the Trustee Act, 1850, s. 27, for the appointment of a trustee to assign certain policies of insurance in the Amicable Insurance Office, which had been assigned by the testator, upon the refusal of his executors to act, and of the judicial factor, who had been thereupon appointed in Scotland, to complete the assignment. It appeared that the insurance office had recognised the assignees in their books.

Cambrien in support; *Anderson* for other parties.

The *Vice-Chancellor* said, that the Court had no power to declare the judicial factor a trustee within the Act, but as the dividends were within the power of the parties, an order for payment of the dividends would be made if the insurance office entered the petitioners' names in their books.

Wynch v. Grant. May 29, 1854.

BREACH OF TRUST.—DEED OF APPOINTMENT OF NEW TRUSTEES.—SIMPLE CONTRACT DEBT.

A breach of trust was committed in dealing with the trust moneys under a marriage settlement: Held, that the trustees, who were appointed by deed, under hand and seal, of assignment of the trust property, but without any words of covenant, were simple contract and not specialty debtors.

It appeared that a sum of 7,400*l.* was settled on the marriage of Mr. and Mrs. Wynch, on certain trusts, and that a breach of trust had been committed in dealing therewith, and the question now arose, whether the trustees were specialty or simple contract debtors. The deed whereby they were appointed contained an assignment of the property to them on the trusts of the settlement, and gave them power to act as if originally appointed thereby, but there were no words of covenant in the deed, which was made under their hands and seals.

Glasse and A. Smith for the plaintiff; *W. Hislop Clarke* for the tenant for life; *Giffard and Cairns* for the executors.

Adey v. Arnold, 2 De G., M'N. & G. 432, was cited.

The *Vice-Chancellor* said, that on the authority of the case cited, the debt was a simple contract and not a specialty debt.

Vice-Chancellor Stuart.

Cope v. Arnold. March 2, 3; May 27, 1854.

WILL AND CODICIL.—CONSTRUCTION.—EQUITABLE TENANT IN TAIL.

A testator by will devised real estates to his eldest son for 99 years, if he should so long live, and subject to the term to trustees for his life to preserve contingent remainders, and from and after the determination of the said estates, subject as aforesaid to the heirs of the body of the eldest son. There was a devise over in default of issue in the same terms to the second son, and in default of his issue to the heirs of the testator's body, &c. By a codicil he confirmed the will, and devised all his freehold and copyhold estates to trustees to the use of them in fee, upon trust immediately after his death to convey to the trustees of his marriage articles a certain part to make up his wife's jointure. The son executed a disentailing deed, and devised the estates to the defendant, but it appeared that there was a daughter of such son who had married, and the plaintiff was her eldest son: Held, that the plaintiff took as equitable tenant in tail under the will.

MR. GEORGE ARNOLD, by his will, devised certain real estates to his eldest son for 99 years, if he should so long live, and subject to the term to trustees for his life to preserve contingent remainders, and from and after the determination of the said estates, subject as aforesaid to the heirs of the body of such eldest son; and in default of issue subject as aforesaid to his second son for 99 years, if he should so long live, and subject to such term to trustees for his life to preserve contingent remainders, and from and after the determination of such estates to the heirs of the body of the second son, and in default of issue to the heirs of his own (the testator's) body, and in default thereof to his wife during widowhood, and after her death or marriage to such persons and for such estates as his eldest son should by deed or will appoint, with similar powers of appointment to the second son and the widow, and with the ultimate remainder as therein mentioned. By a codicil, the testator, after confirming his will, devised all his freehold and copyhold estates to trustees to the use of them in fee, upon trust immediately after his death to convey to the trustees of his marriage articles such part thereof as his trustees should in their discretion think fit, and as would, with the estates comprised in the articles, make up his wife's jointure to 1,200*l.* per annum, and he empowered his trustees to sell and exchange or mortgage any part of his estates, and that their receipts should be sufficient discharges. The testator's eldest son had a daughter who married Mr. James Cope, and the plaintiff was their eldest son and now claimed as equitable tenant in tail. It appeared that the testator's son had executed a disentailing deed, and had by his will devised the estates to the defendant.

Wigram, Malins, Toller, Rogers, C. Chapman Barber, and Boyle for the several parties.

Cur. ad. vult.

The Vice-Chancellor said, it had been argued that the effect of the codicil being to vest the whole fee simple of the legal estates in trustees, and to make the limitations in the will effective only as giving equitable estates, the devise to the heirs of the body of the eldest son coalesced with the equitable estate, said to have resulted to him for his life, according to the rule in *Shelley's case*, 1 Rep. 104 a; and it was said that, as the legal estate during his life was given to the trustees, the freehold resulted to him as an equitable estate, and uniting with the equitable devise to the heirs of his body made him equitable tenant in tail. Unless it could be shown that an equitable estate of freehold resulted, the case of the defendant must fail. But there was an express devise of the beneficial interest for 99 years, and if an equitable freehold resulted by operation of law, either the term must be merged in the freehold, or there must have been two equitable estates co-existing—one for the term of years and the other the freehold by operation of law. There were difficulties in holding, however, consistently with decided cases, that the freehold could re-

sult by implication to one to whom an express estate was given for a term of years: *Fearne's Conting. Rem.* (10th ed.), vol. 1, p. 42; *Adams v. Savage*, 2 Salk. 679; *Rawley v. Holland*, Vin. v. 22, p. 189, pl. 11; *Tippin v. Cosin*, 4 Mod. 380; *Carth. 272*; *Else v. Osborn*, 1 P. Wms. 387. But the present case was not embarrassed with these difficulties, as no part of the equitable freehold could result by operation of law, except so far as the limitations failed to exhaust the whole beneficial interest; and as the testator had disposed of the whole fee simple, legal and equitable, by a series of valid limitations, which exhausted the whole and left no part of the freehold or beneficial interest undisposed of for any period. As the whole of the defendant's case depended on the notion of an equitable freehold resulting by implication to the eldest son, and there was no ground for that implication, the defendant's case must fail, and a declaration made in the plaintiff's favour as equitable tenant in tail.

Court of Queen's Bench.

Taylor v. Dove; Taylor v. Nesfield. May 25, 29, 1854.

ACTION FOR ASSAULT AND MALICIOUS PROSECUTION.—MISDIRECTION.—NOTICE OF ACTION.

The defendant, a constable, was called on by the chairman of a public meeting to remove the plaintiff on his attempting to interrupt the proceedings, and in doing so an assault was committed, for which the plaintiff was indicted, but the grand jury threw out the bill: Held, in an action against the constable to recover damages for the assault and for maliciously and without probable cause causing the plaintiff to be indicted, that the question of there being reasonable and probable cause should have been left to the jury, and a new trial was ordered, the jury being directed to find for the plaintiff, as the defendant was bound to prove he had legal authority.

In an action against the chairman, who justified under the 11 & 12 Vict. c. 44, the notice of action omitted the word "maliciously." A rule was discharged for a new trial upon the defendant having thereupon obtained a verdict.

A RULE nisi had been obtained on April 20 last, to set aside the verdict for the plaintiff and for a new trial in this first action, which was brought to recover damages for an assault, and for maliciously and without probable cause causing the plaintiff to be indicted for an assault upon the defendant in the execution of his duty as constable at Bakewell. It appeared that the constable had been called upon by the chairman of a public meeting (the defendant in the second action), to remove the plaintiff on his interrupting the proceedings, when assault in question was committed. The grand jury had thrown out the bill on the indictment of the plaintiff for an assault. On the trial at the last Derby assizes, before *Jervis, L. C. J.*,

the plaintiff obtained a verdict against the constable under the direction of the learned Judge that the defendant was bound to prove he had legal authority to turn the plaintiff out, but failed in the action against the chairman, who justified under the 11 & 12 Vict. c. 44, on the ground of insufficient notice of action, whereupon cross-rules had been obtained.

Macaulay and Brewer for the plaintiff; *Mellor and Hayes* for the defendants.

The Court said, that the rule would be made absolute for a new trial of the first action on the ground of misdirection, the question of there being reasonable and probable cause not being left to the jury, but the rule would be discharged in the second action, the notice of action having omitted the word "maliciously," which was necessary.

Regina (ex parte Harding and others) v. Vicar, &c., of Bourn. May 29, 1854.

SMALL TENEMENTS' RATING ACT.—RIGHT OF OCCUPIERS TO VOTE AT ELECTION OF CHURCHWARDENS.—MANDAMUS.

A mandamus was refused on the vicar and churchwardens of a parish, in which the 13 & 14 Vict. c. 99 had been adopted, to convene a vestry and proceed to the election of churchwardens for the remainder of the current year, although the officers elected had been elected by the owners, and the votes of the occupiers had been excluded.

THIS was a motion for a rule nisi for a mandamus on the defendants to convene a vestry and to proceed to the election of churchwardens for the remainder of the current year. It appeared that the parish had adopted the 13 & 14 Vict. c. 99, in the year 1850, but that on the election for churchwardens the votes of the owners only and not of the occupiers had been admitted at the vestry held for such purpose.

Lush in support, on behalf of the occupiers who claimed to vote, referred to ss. 1, 6, and 7 of the Act, and cited *Rex v. Rector, &c., of Birmingham*, 7 A. & E. 254.

The Court said, that in the case cited the previous election was void, which was not the case here, merely because certain persons claimed to vote and were not allowed, and the rule would therefore be refused.

Ridgway v. Cannon. May, 29, 1854.

COMMON LAW PROCEDURE ACT.—LEAVE TO PROCEED AS IF PERSONAL SERVICE ON LUNATIC.

Application had been made to the proprietor of the lunatic asylum, in which the defendant, to an action on a bill of exchange, was confined, to see the defendant, but he had refused without the consent of the friends, whose residence, however, he refused to give. Attempts had failed to discover them, and the copy writ had been left with the proprietor of the asylum, and also with the attorney who had formerly acted for the lunatic: A motion was refused under 15 &

16 Vict. c. 76, s. 17, for leave to proceed as if personal service had been effected, and the proprietor of the asylum was directed to be applied to produce the defendant, and in default a habeas corpus.

THIS was a motion for a rule nisi, under the 15 & 16 Vict. c. 76, s. 17,¹ for leave to proceed as if personal service had been effected in this action, which was brought on a bill of exchange, against a lunatic confined in an asylum. It appeared that application had been made to Dr. Bush, the proprietor of the asylum to see the defendant, but that he refused, except on the order of his friends, whom, however, he refused to state; and upon failing to discover them, a copy of the writ had been left with Dr. Bush and on the attorney, who had formerly acted for the lunatic.

Paterson in support.

The Court said, that the application must be refused, but that the course would be to inform Dr. Bush he ought to produce the lunatic, in order to his being served, if it could be done without injury to his health, as otherwise there would have to be a habeas corpus for the purpose.

Court of Common Pleas.

Hopkins v. Tanqueray. May 26, 1854.

ACTION ON WARRANTY.—SALE OF HORSE BY AUCTION.—REPRESENTATIONS.

It appeared that the plaintiff was examining on the previous day the defendant's horse, which was for sale by auction, but on the defendant saying, "You have nothing to look for, he is perfectly sound in every respect," the plaintiff replied, "If you say so, I am satisfied," and purchased at the auction the next day when the horse was put up without warranty: Held, making absolute a rule to set aside the verdict for the plaintiff and enter a nonsuit, that the words merely amounted to a representation, and not to a warranty.

THIS was a rule nisi to set aside the verdict for the plaintiff and to enter a nonsuit in this action, which was brought on the warranty of a horse sold to the plaintiff by auction. It appeared on the trial before *Talfourd, J.*, that the plaintiff was examining the horse on the day before the sale, and that the defendant had

¹ Which enacts, that "the service of the writ of summons, wherever it may be practicable, shall, as heretofore, be personal; but it shall be lawful for the plaintiff to apply from time to time, on affidavit, to the Court out of which the writ of summons issued, or to a Judge; and in case it shall appear to such Court or Judge that reasonable efforts have been made to effect personal service, and either that the writ has come to the knowledge of the defendant, or that he wilfully evades service of the same, and has not appeared thereto, it shall be lawful for such Court or Judge to order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as to the Court or Judge may seem fit."

said, "You have nothing to look for, he is perfectly sound in every respect," and that the plaintiff had answered, "If you say so, I am satisfied." The following day the auctioneer announced the horse for sale without warranty, and the plaintiff purchased on the faith, it was contended, of the prior representation.

Byles, S. L., and Finslason showed cause against the rule; *Edwin James and Lusk*, in support, were not called on.

The Court said, that the words merely amounted to a representation before the sale, and not to a warranty. The horse was sold by auction without warranty, and the rule would be absolute to enter a nonsuit.

Court of Erchequer.

Amor v. Masters. May 26, 1854.

ACTION IN TROVER.—DISTRESS FOR POOR-RATES.—NOTICE OF ACTION.

In an action to recover possession of a watch taken by the collector of poor-rates under a distress warrant for rates in arrear, it appeared that no notice of action had been given, and that the plaintiff only let a portion of his house, and would be liable under the local act as occupier: A rule was made absolute to set aside the verdict for the plaintiff and for a new trial.

THIS was a rule nisi by leave reserved granted on April 22 last, to enter the verdict for the defendant in this action, which was brought to recover possession of a watch taken by the defendant as collector of poor-rates of the parish of Marylebone under a distress warrant for the arrears of poor-rates for a year and a half. The defendant pleaded (*inter alia*) that he was entitled to notice of action, which had not been given. The rule nisi was also granted for a new trial on the ground that the plaintiff had only let a portion of his house, and not the whole, and would therefore be liable under the local act as occupier. On the trial at the Sittings in Middlesex after Hilary Term last, the plaintiff obtained a verdict.

Pigott showed cause against the rule.

The Court (without calling on *Watson and Petersdorff* in support) said, there must be a new trial on the matters contained in the affidavits.

McKellar v. Summers, jun.; ex parte Summers, sen. May 27, 1854.

COUNTY COURT.—INTERPLEADER.—CERTIORARI.—PROHIBITION.

A motion was refused for a certiorari to remove an interpleader suit in a County Court to try the right to certain property seized under an execution, although stated to be of the value of 400*l.*, and a prohibition was also refused on the bailiff against continuing in possession of the goods.

THIS was a motion for a certiorari to remove an interpleader suit in the Rochester County Court to try the right of property in certain bricks seized under an execution out of

that Court, and stated to be of the value of 400*l.*

Worsley in support.

The Court said, that although there might be some circumstances which would render it proper to remove the whole case into this Court, yet in respect of this particular matter, which only involved the question of the execution of the judgment of the County Court, that Court alone had authority to decide, and besides an interpleader suit could not be removed by certiorari. The motion would therefore be refused, and also a motion thereupon made for a prohibition against the bailiff continuing in possession of the goods seized.

Grey and another v. Willicombe. May 27, 1854.

ACTION FOR DAMAGES ON DETENTION OF BUILDING MATERIALS.—EXCESSIVE DAMAGES.

The plaintiffs had contracted to erect a hot-house for S., but upon their having discovered he had executed an assignment to the defendant for the benefit of his creditors, they demolished the building and collected the materials for removal, but had been prevented doing so by the defendant, and they consequently applied to their attorney, and incurred an expense of 13*l.* odd: Held, that an action was maintainable to recover damages from the defendant for such detention.

THIS was a rule nisi for a new trial granted on April 19 last of this action, which was brought to recover damages from the defendant for having seized and detained certain goods belonging to the plaintiffs which they were about to remove, and preventing their removal until after great delay and an expense of nearly 14*l.* It appeared that the plaintiffs had contracted to erect a hot-house for one Sweet, at Tunbridge Wells, but that upon their having discovered he had executed an assignment of his property to the defendant for the benefit of his creditors, they demolished the building and had collected the materials for removal, when the defendant, who was one of Sweet's trustees, had claimed the goods under the deed, and had prevented their removal until the plaintiff had obtained the assistance of the attorney, at an expense of 13*l.* odd, and on the trial before *Pollock, L. C. B.*, at the last Sitting at Westminster, they obtained a verdict, with 12*l.* damages. The rule had been refused on the ground that the bill of sale was admitted in evidence without calling the attesting witness, but was granted on the other grounds that no trespass in law had been proved, that the goods were not the plaintiff's property, and that the damages were excessive.

Bovill and Wise showed cause; *Bramwell and Rose* in support.

The Court said, that the action was maintainable, but that there must be a new trial on the ground of excessive damages, unless Mr. Bovill consented to reduce them to 4*l.*, and the case stood over accordingly.

The Legal Observer,

AND

SOLICITORS' JOURNAL

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SATURDAY, JUNE 10, 1854.  
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REJECTION OF THE TRUST CLAUSES IN THE SOUTH SEA COMPANY'S BILL.

THE Select Committee of the House of Lords, after hearing the evidence and the arguments of counsel on both sides, met on Saturday last, the 3rd instant; and, after deliberating about an hour and a half, the solicitors and agents were called in and informed that the Committee had determined that the South Sea Bill should proceed for the purpose of winding up the company, but that all the clauses relating to the administration of private trusts should be struck out.

The Bill of the Executor and Trustee Society was rejected altogether.

We have several times briefly stated our objections to these joint-stock projects, but, considering the importance of the decision at which the Select Committee has arrived, and in order fully to record the various reasons against the proposed alteration of the Law, and if possible to prevent the revival of such measures in any future Session, we deemed it expedient to make the following extracts from the able speech of Mr. Selwyn, on the 29th May, in support of the petitions against the Bill by the Incorporated Law Society, and numerous individual solicitors both in the metropolis and the country.

At the close of the evidence adduced by the promoters of the Bill:—

Mr. Selwyn said, "It now becomes my duty to address to your lordships some observations, on behalf of the Incorporated Law Society, the petitioners whom I represent, in opposition to this measure. The measure has been described by my learned friend, Mr. Rolfe, as being a complement of those measures which have been passed for the improvement of the Court of Chancery. I beg leave to differ

from that view, and I shall endeavour to show to your lordships that so far from its being in any degree a complement to those measures, the principle which you are asked to affirm in this Bill is antagonistic to those measures—it is a Bill to enable the South Sea Company, a company sanctioned for trading in the South Seas and encouraging the fisheries, to undertake the management of private trusts—I shall show to your lordships that this is a measure introduced as a private Bill, in which you are asked to decide several most important principles, entirely at variance with the decisions of your lordships' House, sitting as a judicial body, and also with the proceedings of the Legislature. You are asked, 1st, to establish the legality of trading interests, and making a profit out of that trade; 2ndly, you are asked to establish the principle of limited liability of trustees, and to absolve them from all personal responsibility; 3rdly, you are asked to sanction an unlimited capacity in a corporation to take land, and hold and manage land, to any amount; 4thly, you are asked to contradict a principle deliberately sanctioned by the Legislature about 20 years ago, when they decided in the case of municipal corporations who were possessed of large charity estates, in trust, that it was not advisable to allow them to continue in the hands of those corporations, but to appoint individual trustees; 5thly, your lordships are asked to do this on behalf of a body who have avowed before your lordships the intention of superseding as far as possible, the established tribunals of the country.

"My lords, I shall hope to show to your lordships that the reasons upon which this House has been asked to sanction these different matters are insufficient, and that they are not supported by any evidence of weight; and also I shall endeavour to show your lordships that even if the evils which have been suggested do in fact exist, this measure is not a measure calculated to remedy those evils. I shall go further, and I shall endeavour to show your lordships, that even if this Bill could remedy all or any of those evils, still it would introduce new and additional evils of much

greater magnitude. And finally, I shall submit, that even if the Committee should be against us upon all those points, at all events, that this is a measure involving such principles as ought not to be introduced by a private Bill, but if Parliament in its wisdom think fit to alter the established law of the country in a matter of such importance, it should be done after due deliberation and as a public measure.

"Now, my lords, to commence with the reasons which have been offered to your lordships on behalf of this measure, in the first place, my learned friend, Mr. Rolt, has principally urged this—he says that there is no rule against trustees accepting remuneration for the execution of their duties as trustees, and that that is not opposed to any principle of law. I will assume that it is not, but there is another principle of law which will be most distinctly violated if this measure is to pass—a rule of law which, I am sure, your lordships will be the last to infringe in the slightest degree, namely, that rule of law which denies to any man the power of placing himself in a position where his duty and his interest are opposite. That rule which invalidates every act of a man who is placed in that situation—that rule will be hostile to this measure. Once concede this company to be established, it is impossible it can exist for a single day, or almost an hour, without its having most distinct and opposite interests, when they are considered with reference to its duty. This body of directors—these 21 gentlemen, who are to have the management of all these various trusts—they will have in the one case their own interest as trustees to please their own shareholders. We all know what governs the principle of election between shareholders and directors—it is a dividend—a dividend by all means—rightly, if they can, but by any means a dividend. That is the principle and foundation of the relation between shareholders and directors—that is the very thing upon which their existence as directors depends, because if the shareholders find they are too scrupulous, or the dividends are not sufficient, the first thing that is done is to turn out the Board of Directors. The interest which they would have to secure first, would be their own position and the interest and the good will of the shareholders of the company, and that must be in almost every instance in direct opposition to their duty to those whom they represent—their *cestuis que trustent*. Take, for instance, the commonest case of investment. They are to have their own capital, which they say is 3,000,000*l.*—that is to be invested without any limit, as Mr. Franks tells you,—as to the nature of the security, they are to undertake all those trusts which, another witness has told your lordships, owing to the expansion of trade and commerce, involve every kind of investment, for we now find the most different kinds of investment authorised by deeds of trust—all that will be in their power. Why, my lords, the mere difference of an hour or two hours, or a day in one investment, may make thousands of pounds difference. They in-

tend to have two stock accounts—one the South Sea Stock Account, the other to include all these trusts. They give their brokers directions to buy or to sell; of course they would make no specification in respect of which particular account they were to buy or to sell, and the consequence would be that the difference of an hour in a fluctuation of the funds would make a loss or gain of thousands of pounds. Are we to presume that they would not take a good transaction to themselves, and leave a bad one to their *cestuis que trust*? So with respect to two or three trusts, they avow the intention of not separating the trust funds. It would be at all times in the power of this board of directors to say, 'This investment shall be for trust A. or for trust B. ;' and they might manage it in any way they might think fit. I might go on with observations upon investments in lands, but I will not weary your lordships by doing it. The slightest observation will show that it is impossible to put any body of men in this position without seeing that their interest and their duty must be continually conflicting. So, also, that which Mr. Franks admitted, if they received one per cent., their interest and their duty towards their own shareholders would be to give themselves as little trouble as possible, to get rid of the trust as soon as possible, and manage the estates as economically as possible, and to have as few agents and clerks as possible, and in fact so to manage it as to secure to their own shareholders the largest amount of dividend they could. That would be their interest and their duty, in one sense, but what is their duty to their *cestuis que trust*? It must be exactly the reverse. Their duty to their *cestuis que trust* is to manage the matter regardless of expense, so that the expenditure is made *bona fide* for the benefit of the estate. Therefore, my lords, I say that the rule of law to which I have alluded, and from which no Committee of this House will depart, is inconsistent with the principle of this Bill.

"Then take my learned friend, Mr. Rolt's statement and consider it in another point of view. He says there is no rule of law which prevents a trustee from accepting remuneration. How does he explain the fact, if there is no rule against it, that up to this time such a thing never has been heard of? Is not that of itself the strongest proof that the universal consent of mankind is to abstain from doing that which he says is lawful? Is not that the strongest argument to show that what they seek to establish, namely, the difficulty there is now in finding proper persons to undertake such trusts, has no foundation, for your lordships are aware in matters of bankruptcy, and winding up, so far from there being a difficulty, the parties are always overwhelmed with applications from persons who are perfectly competent and perfectly trustworthy, to be official managers or assignees. There is no difficulty in finding trustees. If it were necessary, those persons might take any office of the kind, receiving proper remuneration. What has the universal

consent of mankind shown? Why, that the accepting of a trust is one of those social duties which Englishmen are always ready to perform for each other. I accept, then, my learned friend's proposition; and I say that there is no rule of law, and when you find there never has been any practical difficulty in finding persons to execute that duty, why are you to infer, and set all that aside, and say, 'We are now different from our ancestors,' when trustees have been found up to this time,—although Mr. Hankey says, 'When friends or connexions come to ask me to accept trusts, I cannot refuse.' So, also, when his father became unfit, infirm, and incapable of acting, he did, what any other man in his position and station in society would do, accept his father's trusts, and carried them on satisfactorily, and no doubt beneficially, for the parties interested. That circumstance shows that there really is no reason to apprehend any of those difficulties which have been suggested, as being sufficient to induce this House to sanction a departure from established principles which have been so long recognised by Courts of Law and by the Legislature. Your lordships will bear in mind that before there can be any trustees, there must be some property. You find that when men are possessed of property, friends are not wanting, and they have very little difficulty in finding trustees. And experience will show that if a man has anything to put into trust, he has very little difficulty in finding trustees, and practically down to the present time the fact that trustees have always been found to act without remuneration, although the law will permit them to receive remuneration, is sufficient to show that there is no such practical difficulty in finding persons to accept such an office.

"Then, my lords, the next point that my learned friend suggested is, that although trustees may undertake the office, they do, in fact, not exercise it; but they leave it to be done by solicitors or agents.

"I deny, my lords, the statement altogether, and I think your lordships have not heard of anything to induce you to believe that such is the actual practice. We all know that in this country there are persons who will undertake social obligations and personal responsibility, which is of the essence of trusts,—one of its most important features,—and do themselves take care to administer those trusts in person. It is true, in case of doubt and difficulty they go, as every man naturally does, to the person in whom he has confidence and whom he is in the habit of consulting, namely, his solicitor. And would not that be the case, supposing their affairs were in the hands of this joint-stock company? If any difficulty arose in the administration of the trusts, would not a man then, just as now, go to his solicitor and incur precisely the same expense, with the additional expense of having paid one per cent. upon all the trust fund? If a difficulty arose, a man would go to his solicitor in either case. To say that they now go to their solicitors, is

certainly no argument in favour of putting the trust funds in the hands of a body such as is proposed to be established. I would suggest, in a case of difficulty, the very last persons whom any *cestuis que trustent* would be willing to trust would be a board of directors constituted as this would be. I would put this case,—supposing some family matters had to be arranged—he would go to a solicitor and say, 'I do not like to have this matter discussed before a board of 21 individuals;' or he would say, 'My affairs are unfortunately in the hands of this joint-stock company;—I do not know who the directors are;—I am very anxious about these family affairs; there are circumstances which induce me to ask for the advance of one of my children, or to compel them to educate one of my children;—I do not want to have that discussed on the Stock Exchange;—find out some way for me in which I can make such a proposition that the directors will adopt.' So far from the employment of a solicitor being obviated, the very appointment of such a board to manage such a trust would increase the necessity for the advice of solicitors and agents.

"The next reason urged before your lordships is, that the chance of death or incapacity of trustees renders it necessary for persons to look out for and obtain young men, and consequently persons of inexperience. The persons who are ordinarily selected for trustees are persons who, from their connexion with the family, are those whom they believe will best manage the affairs of the trust. The inception of a trust is generally a simple matter, because no man would put matters into trust which he believed would immediately give rise to complication or difficulty. At first everything is plain,—for some years it generally does go smooth,—then these young men, before the time of difficulty arises, would become competent to discharge the duties which may devolve upon them. But, my lords, the answer which appears to me to be sufficient for that is, that in such a case as that no party would place his affairs in the hands of this company at all; and your lordships are aware that my learned friend, Mr. Rolt, has admitted, as he must do, that is only complicated cases that would be intrusted to the company, and that in a simple case of trust no settlor would be so mad as to go and pay one per cent. to a company of this description. Those accidental cases of failure of trusts by reason of parties going abroad are things not anticipated at the time, and may arise in the most simple cases, and there would be no reason whatever why such cases should go to this company, because it is only complicated and not simple cases that would go to the company, and in nine cases out of ten such accidental difficulties would not be considered likely to occur. Then, my learned friend, Mr. Rolt, has said, that this difficulty of getting trustees, is that which throws the administration of the trust into the Court of Chancery for decision, and therefore occasions expense. Now, in that I take leave

to differ from him entirely. Speaking before this Committee, I think I shall have no difficulty in showing that it does not follow at all that because there may be a necessity of applying to the Court of Chancery for the appointment of trustees, that therefore the Court should take upon itself the administration of the trust. Your lordships are aware, that by the new regulations you have nothing to do but to present a common petition without any suit or other proceeding. A mere common petition is presented, upon which the Court has the power of appointing new trustees, and by the same order all the estate is vested, without any deed, in the persons so appointed new trustees—the whole thing is done by one order, and at a very trifling expense. It is very true that at the present period, although happily that is diminishing, the Court is burdened by a considerable sum in consequence of compensation awarded to certain persons who have retired, and which creates a great burden upon the suitors—that is happily diminishing—the expenses of the Court are diminishing, and the expense of such an order as that is very trifling indeed, and is likely to diminish still more every day. Compare it with this proposal—here, in the first instance, before the difficulty arises, you are to pay one per cent. upon the whole of the trust fund. Then, as the proposed Bill properly provides, there must be in every case at least one deed declaring the trusts in this corporation. I say those two expenses put together will infinitely outweigh any expense that may arise from the mere presentation of a petition for new trustees,—I say with the greatest confidence, that the presenting of such a petition for the appointment of new trustees, the making the order and vesting the funds in the trustees, do not necessitate the taking the administration of the estate into the Court of Chancery. On the contrary, the new trustees would be invested with the same power that the old trustees had in every particular. It is true that if any difficulty arose; if any of the parties said, ‘I choose to have a bill filed and to have the whole matter administered in the Court of Chancery,’ then it may be necessary for the Court to take the administration of the trust. But so it would be if this company were the trustees. They do not propose to put in a clause that nobody is to be allowed to appeal to the tribunals of the country. They have not yet got so far as that, although Mr. Franks’ views are something like it. If there is any question to be litigated,—if there is any question arising in the administration on which it is necessary to have the decision of the Court of Chancery, the matter would go to the Court of Chancery just as much after it had been submitted to this company, and after they had received the one per cent., with that additional grievance into the bargain. Therefore, it does appear to me that my learned friend is entirely unfounded in his observation, when he says the difficulty of appointing new trustees necessitates the administration of estates in the Court of Chancery.

“The next point referred to by Mr. Rolt, and also referred to by Sir John Patteson, was the annoyance which is occasioned to trustees by the applications of their *cestui que trust* to make improper investments, to make loans that are not authorised by the trust. First, I think that was sufficiently answered by an observation which fell from one of your lordships, that a man must be exceedingly thin-skinned who could think of being seriously annoyed by such applications. A man has his plain duty pointed out, and a person comes and asks him to depart from it; he declines it. One of your lordships observed, ‘It is certainly going a long way to say that that is so serious an annoyance that it is to be brought forward as a ground for Parliament to interfere in a matter of such importance.’ A man has nothing to do but to say, ‘You have appointed me trustee; I have a certain line of duty chalked out; in that I will walk, and I will not deviate from it.’ There is another answer which the recent Reports afford, that it is impossible for any trustee to say he can be aggrieved, or placed in any position of difficulty, or any situation which will give him the least right to ask Parliament to interfere on his behalf. What has Parliament already done? By a public Act on behalf of trustees it has authorised trustees, when any case of doubt or difficulty arises, to come with a mere affidavit which would cost them nothing—they can come with an affidavit in one hand and the money in the other without any order of the Court, without any expense or trouble, pay the money into Court in the name of the Accountant-General, and they are completely released and discharged as against every one. I think that is at least a sufficient answer to any complaint made before your lordships by any person filling the office of trustee, if they have any reason to be dissatisfied, or have been deceived in the inception of a trust. If difficulties occur which they did not contemplate; if parties act differently from what was expected from them, under all or any of these circumstances the trustees have this simple and immediate remedy, by which they can obtain at once a most complete and effectual discharge. I think, after that, it is impossible that your lordships can pay any attention to complaints coming from the side of trustees.

“But, on the side of *cestui que trusts*, the fact of such applications being made introduces a very strong reason why your lordships should abstain from sanctioning a departure from that principle of personal liability and personal responsibility which is of the very essence of a trust. If your lordships are to sanction this principle with respect to one of these companies I presume it is to be sanctioned with respect to hundreds, because we have undoubtedly heard nothing to show why this company trading to the South Seas and encouraging fisheries, is the most proper vehicle in which you are to place the administration of all trusts. It would be difficult to see how, if this company is to be intrusted with the administration of trusts, you can refuse your sanction to well established

insurance companies or any other companies, to undertake the same matters. It would be difficult to find any company so foreign to the administration of trust funds as this company for carrying on fisheries at the South Seas and encouraging those fisheries. If we are to have these rival companies, what is the very thing upon which they will encourage persons to come to them? They will be continually holding out inducements. Each will be trying to sail nearest to the wind. What must be that inducement? To enable tenants for life to obtain these loans and improper investments. It is the very thing which boards of directors who have no personal responsibility would be most likely to do. It is that which we find them doing in their own affairs, namely, continually making investments contrary to their trust deed. Is it likely that they will be more particular in the administration of other persons' affairs? What can be a greater temptation? If a tenant for life wants a loan or an improper investment, he goes to this company and says, 'Here is a large fund; it will procure you one per cent., but when I come to ask you to make that advance you must be satisfied with such security as I can give you; you must run the risk; you have a large capital;' and no doubt it would be done. That is the sort of business and competition which would be practised. The difficulty which now exists in the way of making these improper investments and improper loans would be comparatively removed, because you would have a number of companies in competition with each other, and offering the most advantageous modes of committing a breach of trust. I have no doubt that that would be one of the principal lines of business and competition between these companies.

"Then, my lords, the next reason which my learned friend, Mr. Rolt, has urged to induce your lordships to pass this measure, is that the administration of estates is not the business of a judicial tribunal, and that there is nothing more easy than to separate the question between what is judicial and what is administrative. There I take leave again to differ from my learned friend both in point of fact, and in inference. First, in point of fact; he says, there is nothing more easy. As your lordships are aware, the very questions of administration are those which most frequently call for judicial decisions. Take that well known class of cases where a man leaves large property in trust for tenants for life, a property consisting of leaseholds wearing out,—long annuities and other securities which produce a large rate of interest but which terminate in a certain number of years. The question which immediately arises is a mixed administrative and judicial question, it is one in which the Judge is to decide which property ought to be sold and which ought to be retained, it must take on itself the administration of the whole thing, and then from time to time take proper measures for realizing the securities. That is one of the most prominent of the cases that come before

the Courts. Even when the Court of Chancery does take upon itself the administration of the affairs of any trust, it does it in a manner much more calculated to benefit the parties than could be done by trusting those same affairs to a joint-stock company at such an expense. Your lordships are aware that in those cases, if there is any one in whom the parties have confidence or who is conversant with the estate, it is the most common practice to appoint that person a receiver, and if any such person can be found who is a party to the suit, or even if not a party to the suit, who is willing to take the management, the Court at once appoints him, and appoints him in many cases without salary, all expense is avoided, and then you have the estate placed in the hands of a person who, although he is in point of form appointed by the Court of Chancery, is in fact the nominee of the persons beneficially interested in the estate, a person who if he is guilty of misconduct can at once be removed, and who has the fullest means of knowledge. On the other hand, what you are asked is to place these same estates in the hands of this fluctuating body of trustees over whom the *cestuis que trustent* have no control, and who are, from the nature of things, entirely ignorant of the circumstances of the estate which they are called upon to administer. So with all the investments, you are aware that the Court makes not the least charge for any of the investments. You have heard what the expense is of the establishment kept up in the Bank of England, and which expense would have to be incurred by this company. If they even pretended to keep the accounts in any degree separate, they must have almost an equal establishment, the great expense of which must be borne by the *cestuis que trustent*, because they do not come and say they have obtained or expect to obtain people to take great labour for nothing in a case where they have no family reasons to do so. I say that unless there is some serious question to be decided, some hostility between the parties, or some reason of that kind, the Court of Chancery does not take on itself the administration; and in the case my learned friend, Mr. Rolt, supposed, even if the Court did appoint a receiver, which it does not unless upon a proper application and for some special reason, it might appoint any person or party to the cause without salary. In those cases where there are hostile parties, and when there are points to be litigated, every one of those cases would come into Court ultimately and necessarily exactly the same as if it had not been placed in the hands of this company. The establishment of such a company does not remedy the evil in the least degree. The only result would be that you would have to pay one per cent. and go through the form of the deed of trust by the company, then hostility would arise, and one or other of the parties would throw the matter into Chancery.

"Now, my lords, with respect to the evidence adduced before your lordships, I think it ne-

cessary to trouble your lordships with but very few observations. First, it is not matter of surprise that we find the Bank of England and its officers very anxious that some company like this should be established. You have heard from them what a vast number of these joint accounts there are, and they assume that all these joint accounts are trust accounts. No doubt it would be a great saving in point of expense, if, instead of a hundred thousand accounts they could have an account of the South Sea Trust Stock, no doubt it would be an extreme convenience to the Bank of England. I am not surprised that they should come forward to advocate this measure. With the exception of Sir John Patteson, they are the only witnesses who have been called before you; and even when we come to look at the evidence of these persons, what is it? Take Mr. Weguelin, first, he has candidly told the Committee that he has really no personal knowledge on the subject, he says, 'we take no cognizance of trusts, and I cannot pretend to speak from any personal knowledge.' But, my lords, to take the instances which he gives. The first instance which he gives is the case of husband and wife. 'It is a very common thing with them, if a man marries a woman who has money they do not wish to go to the expense of a settlement or trust deed. The money is invested in the name of the husband and wife jointly;' this is one of their selected witnesses. The answer to this observation lies upon the surface; their object being to avoid expense they will not go to the expense even of a deed. Then I say is it any remedy for such an evil as that, to say, here is a company who will take your trust at one per cent., and which in the very outset must have what these parties wish to avoid, namely, a deed? Because you will find that they must have, as is provided by their Bill, in every case where a trust is placed in the hands of this company, a trust deed declaring the trust. Therefore, my lords, these parties whom Mr. Weguelin described as being unwilling to pay the expense of a deed, your lordships are asked to suppose, will pay one per cent., and then incur that very expense, because in every instance there must be a deed. When he is asked with respect to instances of breaches of trust, he gives the same evidence as the other witnesses. He knows a few instances, he confirms what was said by Mr. Heath, of there being no instance, in his experience, of cases where three trustees have been guilty of collusion, and of only some six or eight or ten, where there were two trustees who had been guilty of collusion. Mr. Weguelin has known none at all of his own knowledge. The only other ground upon which he put it, was the annoyance trustees are exposed to by applications made to them to commit breaches of trust on behalf of *cestuis que trustent*. Then, my lords, to take the next witness, Mr. Heath, it is, if possible, more ludicrous. Take only his first case, the affairs of Mr. Morando; that is one of those simple cases of trust in which

there is nothing to do but to receive dividend and pay them over to given individuals.

"It stands to reason that no man, if he has a simple trust, will pay one per cent. upon the capital of that trust. Such a case as the case, of Mr. Morando, is a case where a man has nothing to do but to receive the dividends and to pay them over. After the trust has been established, and of course long after, things happen which were not contemplated at the time. Two of the trustees go abroad; it also happens that the parties are very improvident and do not think of this trust before they go, and therefore they have nobody to receive the dividends. Such a case as that would not come into the administration of this company. Take the next case, the case of Mr. Dragonetti,—these are the two instances selected by their own selected witness, Mr. Heath,—a case where there was a complicated will—a will involving several nice questions of law, the whole thing depending upon a disputed question of fact as to the existence or non-existence of an heir-at-law.

"Whatever confidence we may have in Mr. Franks and his eight or ten legal colleagues who may find time enough to go once a month to the South Sea House, is it likely that the Austrian government, and the other persons interested in Dragonetti's estate, and the numerous parties claiming either under or against these charitable trusts sought to be established under that will, would be satisfied with the decision of Mr. Franks and his colleagues,—first, whether there was an heir-at-law, and next upon the numerous difficult questions of law arising under that will. I will take this instance most especially, and I would ask what would be the result supposing this company had been established? Simply this,—first, Mr. Franks and his partners would have taken one per cent. upon the whole trust funds. The question would arise,—Is there, or is there not, an heir-at-law? That must be litigated and determined. Then, if it is determined that there is no heir-at-law, the other questions would arise,—Now the will is to be established, and it is to be determined who is entitled? Which of these are legal and valid trusts, and which are not, and what is to be the result if there is a failure of any of the trusts? Would the parties be satisfied with the decision of Mr. Franks and his partners? The result would be that they would have paid one per cent. to the company, and at last the administration of the whole affairs must go into the Court of Chancery; and whatever necessary costs are incurred would be incurred in addition to the one per cent. paid to the company. Those are the two instances given by Mr. Heath; therefore, I say, unless you are prepared to take the view which Mr. Franks very candidly admitted,—he said, 'We shall become so experienced in matters of law, that I think we shall be able to decide these questions very satisfactorily for ourselves.' Unless your lordships are prepared to coincide with that view, and say in a case like that of

Dragonsetti's will, this board will supersede the Court of Chancery, the only result would be the duplication of the very expense which the promoters of this measure profess to avoid. Now, take Mr. Hankey's evidence. What has he told us? He has most completely confirmed that point which I ventured to suggest at the commencement of my address, namely, that there is no gentleman in the position of Mr. Hankey who does not feel that there is an obligation upon him to take trusts for the benefit of his relations and friends, and there is no gentleman in Mr. Hankey's position who would not do it. Accordingly, although he says, naturally from his position he has been selected to be a trustee in a great many instances, and although he has also, by reason of the age and infirmity of his father, taken upon himself his trusts, when he is asked whether he would place his trusts in the hands of such a company as this, he has told you (as any man would expect that he would) that he would not. He says, 'I cannot call to my recollection any trust immediately that I should be very anxious to so place. I should be very glad, perhaps, but I should not insist on its being so placed if I had the power under such a trust, on account of family connexions.' He recognises that duty as one of the most important duties—one which you are asked to suppose men will not be found in the 19th century to undertake—that is their own witness. When it is put to him, he says, 'I took it from family connexions; and having undertaken it, although I have had more than my share of trusts and have inherited my father's, still there is not any one of them that I would place in the hands of this company.'

"Then the only other witness called on the former occasion was Mr. Franks, and his instance is very remarkable, because he says that he had a trust which was of very long continuance, and that some of the *cestuis que trustent* proposed to him to put it into the Court of Chancery. He thought it was not necessary, and he, no doubt, acting with great propriety, carried it out himself, under that sense of duty and personal responsibility which the law has always recognised up to this time in trustees, and brought it to a successful termination without any expense whatever. That is Mr. Franks' instance. I think that is all the evidence, with the exception of that which you have heard this morning from the other witnesses.

"The first is that of Sir John Patteson, a gentleman in whose opinion your lordships would place the greatest reliance—one with whom it is my pride to say I commenced my legal life as his marshal and under his auspices. His testimony I may be supposed to consider of the greatest possible weight. Now, what has he said? He has brought forward one of those instances of the weak yieldings of trustees in compliance with the solicitations of the *cestuis que trust*. But what has Sir John Patteson told your lordships? Why, that which, I submit, is entirely fatal to this Bill. He says

he has only given his sanction to it, because at the present time, there is established such a board of trustees and directors as would properly manage the affairs by means of their own *personal superintendence*. That he considers to be most essential and material. Without that it would be impossible for him even to have lent his name,—without that it would have been impossible to have asked your lordships even to sanction any such measure,—that is, to use his own words, most essential. Sir John Patteson has not told you how you, who are now to legislate for all time, are to secure the continuance of such a board. Of course, if any trust could be placed in the hands of Sir John Patteson, or Mr. Franks, or any of those other gentlemen, no one would be heard to dispute or question it for a moment; but who are the persons who appoint? What is their qualification? They are to be the holders of a certain amount of South Sea stock. Their whole consideration—the only one thing which they would consider of importance is the *dividend* which they are to receive. If they find their business being taken from them by another company less scrupulous;—if they find, consequently, that they have been induced to embark in business where there are a large number of clerks and accountants, and other officers, and the trust funds do not come in sufficiently rapidly because their directors are so very scrupulous and will not consent to carry out their views, they would get rid of these scrupulous directors,—they would say, 'We must have a board of directors that will suit our purpose,' and so far from there being the security of such a board continuing, which Sir John Patteson said was absolutely essential, every one of those persons might be turned out at the next general meeting, or they might find, as we do occasionally find, proposals brought forward at a board which no man would think of sanctioning as an individual. We find continually in experience that the most scrupulous and most honest will retire from the board and leave the affairs in the hands of two or three who are not so scrupulous, or of a managing director, by whom jobs to any extent are perpetrated, so that the books are kept to all appearance perfectly correct, the whole thing wears a flourishing aspect,—large dividends are declared,—when at last the day of reckoning comes, and the whole thing is found to be a bubble and delusion. The public are induced to pay their money on the faith of the present board of directors. Sir John Patteson's name alone would be sufficient; but in nine or ten years not one of those directors might remain in the company, and a set of new men might be introduced who have the qualification of a certain amount of South Sea stock, and those men would be entirely different from those who originated the company and sanctioned it. Therefore, I say the evidence of Sir John Patteson is perfectly fatal to this measure.

"And what is the evidence of Mr. Smees? What he has done is to confirm the evidence of Mr. Heath. 'I have no personal know-

ledge,' he says, 'but I have heard from *cestui que trustent* who come to me when they have to complain of improper sales of their trust funds.' 'I have heard of several instances;' but he says whenever it came in an authenticated shape, it was his duty to communicate it, and he did communicate it to the directors or the governor. He was referred to Mr. Heath's evidence who was deputy-governor, and has been a director for twenty-one years; and he says that he confirms the testimony given by that gentleman—that in the case of three trustees he never heard of one case of collusion, and in the case of two he may have heard of six or ten.

"Then I say, my lords, if your lordships are of opinion that the reasons alleged in support of this measure are insufficient, or even if you are of the contrary opinion, at all events I am well founded in saying that the opinion of this Committee must be that the evidence is not sufficient to warrant your lordships in passing this measure. I will now go to the next point, and I will show that, even assuming that the evils which have been complained of do exist, the establishment of such a company as this is not the proper or adequate means of removing those evils.

"First, I will call your lordships' attention again to the fact, that this company in its original inception and title is altogether at variance with the purposes now sought, and that no reason has been suggested why this company, trading to the South Seas, and encouraging the fisheries, should undertake all these private trusts. It brings us back to the old days when the most inconsistent matters were brought together into one Act of Parliament—when we used to have an Act of Parliament passed for preventing the spread of distemper in horned cattle, the assize of bread, and for the regulation of Attorneys and Solicitors! This will be almost as ridiculous—to encourage fisheries in the South Seas, and to undertake the management of all private trusts!

"But I will now again avail myself of my learned friend, Mr. Rolt's arguments. I will go through them shortly. What are those things which he said were requisites for the establishment of this company, and which he says are the remedies for the evils? He has, and in which he was followed by the Chairman, Mr. Franks, drawn a most beautiful picture of this continuing body of trustees. He says it is of the greatest possible advantage to be able always to go to a continuing body perfectly conversant with your trust affairs, having all the papers and books ready to answer any questions. His legal imagination has carried him so far as to induce him to represent a corporation as that continuing body. In a legal sense a corporation is that continuing body, but when we come to look at it as men of business—as plain men of common sense—can anything be more fleeting and less continuous than this board of directors which is sought to be established? Here is a body of twenty-one gentlemen, eight or ten of whom are bar-

risters, who are to divide amongst themselves whatever may remain out of the 5,000*l.* a year which Mr. Franks suggests as the amount which is to be for the payment of the expenses of the company. The other 5,000*l.* a year is to be for additional interest on the guarantee fund. Why we have heard from Mr. Smee what is the expense of the administration by the Bank of England of the trusts committed to them by the Court of Chancery. I will divide it and say 2,500*l.* will go to the directors, which is little more than 100*l.* a year each. Do they expect to find gentlemen competent to manage such a business for 100*l.* a year? Is it not obvious to any one that the way it will be managed will be this: There will be a certain number of persons who, when they have nothing else to do will go in and attend the board, and get their one or two guineas, as the reward of their attendance. We all know the manner in which these things are done. I should apprehend that these eight or ten barristers cannot have a great deal to do professionally, or they would not attend there at all. These learned gentlemen are to get their guinea or their two guineas for their attendance. It would be the merest chance whether they would be there one day or another, and whether they would be there at all. If you are to have a continuing body you must necessarily run into this evil—either the trustees will leave the whole thing to some managing man, secretary, or solicitor, who will do as he pleases with the trust fund, or if you have that which Sir John Patteson says is indispensable, the personal attendance of all the directors, those gentlemen being the only persons upon whom Sir John Patteson could rely, they would be always changing, and so far from its being a continuing body, you would have the most fluctuating body, and it would be impossible to say for one week or one month who will be there. These persons must necessarily divide between them the different trusts. Now even in the case of partnerships or bankers, how often do you find when you go to their place of business the person who is acquainted with your affairs is absent, and you are obliged to call again. Much more will this be the case when you have twenty-one directors. It will be four or five to one against the man who happens to take your business being there. So far from its being a continuing body it is impossible to conceive one more liable to change; added to which, the whole body is liable at any time, without any control of the *cestui que trustent*, to be removed from office altogether by a vote of the shareholders of the South Sea Company.

Then, my lords, the second requisite to which my learned friend, Mr. Rolt, referred, and which he alleged as being a remedy for all these evils was, that you were to have a corporation which would have all the same powers as the other trustees. Now I say in answer to this, that has been tried and has been found wanting. Your lordships are aware that before the passing of the Municipal Corporation Act, there were throughout the country a number of cor-

porations, with a large amount of property entrusted to them in trust for different charities. Your lordships are aware that the administration of those trusts by these corporate bodies was so unsatisfactory to the legislature that an Act of Parliament was passed (5 & 6 Wm. 4, c. 76), by which the administration of these trusts was taken away from those corporate bodies, and the very opposite course to what is sought to be established here was established by the wisdom of the Legislature. Those trusts were taken away from the corporations and confided to private individuals, who were selected by the Lord Chancellor for the time being. That was sanctioned even so late as by an Act passed in the last session which recited the Act which had been passed in the 5 & 6 Wm. 4, and by this, which is the last Act relating to charities, viz., the 16 & 17 Vict., c. 137, Parliament again interfered with respect to them, confirming the principle of the former Act, and vesting in those trustees so appointed by the Lord Chancellor, without any conveyance, all the estates which had previously been vested in the corporations. In these cases the trusts generally arose by donations from deceased members of the corporation—they had been aldermen or burgesses—they had confidence in the body—they were desirous of increasing the influence of that body, therefore they left certain estates to those bodies in trust for certain charitable objects. If you could imagine any trusts likely to be managed properly by a corporation it was precisely that, because persons who were members from time to time, elected by their fellow citizens—persons in whom they had confidence—persons in whom the testator himself had confidence, because he selected them to administer the estates which he so devised. But, my lords, notwithstanding all this there was found to be that inherent vice in all corporations, namely, negligence, either leaving it to some one person, or acting as a body in a manner in which no one individual would do. That became so notorious, that in a case with which your lordships are perfectly familiar, one of the Judges who was called upon to correct such an abuse (*the Attorney-General v. East Retford, 2 Mylne & Keen*), when he was discussing the question how far back he should take the account of the rents of an estate which had been improperly managed by one of those corporations, says, 'To carry back the account from the commencement of the misapplication in such cases would prove the ruin of half the corporations in the kingdom.' Therefore that evil was so great that the Legislature interfered, and notwithstanding the wishes and intentions of testators so expressed by their wills, they, in many instances, being themselves members of the corporation, and wishing the corporation to have the application of the fund, it was so abused that the Legislature interfered, and said, No; you shall no longer have these trusts, but these trusts shall be placed in the hands of whom? Of individuals. They recognised the established rule and principle I am advocating,

namely, that trusts cannot be properly administered without personal liability and personal responsibility. Accordingly, they delegated to the Lord Chancellor the duty of appointing responsible gentlemen, who should administer the trust. And now, by that last Act of Parliament, every estate has been vested absolutely in these trustees without deed or conveyance. Therefore it is, I say, your lordships are now asked, upon this private Bill, introduced in this manner to overrule, and set aside a principle which has been deliberately acted upon by the Legislature for the last 20 years.

"Then, my lords, the next requisite to which my learned friend has referred is, the knowledge of which these individuals will be possessed. You will have this continuing body with a perfect knowledge of all trust affairs. I confess it was with some surprise that I heard that brought forward as an argument. At all events, in the outset they must commence with a total ignorance, even in the most simple case of a trust, supposing such simple cases ever get into their hands. It will be necessary for them, or some one to go through the trust, even to ascertain the fact that it is a simple case; but how is it in the present state of things? Why is it that persons are appointed trustees, because they have, either from family connexion or friendship such an acquaintance with the affairs of the trust as will enable them to deal with it, without going into that laborious inquiry which in the case of total strangers, must take place in every—even the simplest—case? So far from knowledge being found in this fluctuating body of 21 directors, they will first commence with total ignorance, and upon any change in their body, upon any inattention or going abroad, or, which is quite possible, the entire change of the whole body, that ignorance would revive, and they would have again to go through the whole business, and again to ascertain the whole case connected with the trust, whereas individuals now selected, are selected because they do possess that knowledge, and from their position and connexion with the family of the settlor in 99 cases out of 100 that knowledge exists and continues. When a case of difficulty does arise, then it may be necessary to consider what is the law applicable to the particular case, but at all events they start with a knowledge *a priori* of all the circumstances of the family which is most material to enable them to arrive at a right conclusion.

"So, my lords, with respect to the next of the requisites, which have been suggested, namely, confidence, responsibility, and solvency. Why, my lords, it is of the very essence of a trust that there should be personal responsibility and personal liability. What your lordships are asked to do, is, so far from establishing confidence, or establishing responsibility, to say, that you will have a set of persons, who, as Sir John Patteson says, will be like a corporation, having no conscience and no soul, and who will act in everything they do under the sense that they are not per-

sonally responsible, and that there is no personal liability whatever connected with it. If confidence and responsibility are requisites they are not to be found in them. They have offered a sufficient reason to your lordships for rejecting this measure. So also, with respect to solvency, the parties who constitutes a trust are the best judges of whether the trustees whom they select are competent and responsible persons. Your lordships are aware that if the circumstances of those persons, or any of them, change, it is competent for the *cestui que trustent* by a very short and easy process, at any time to apply for, and obtain, a change of trustees. They, from being connected with the trustees, are likely to know when such a change takes place, and they are able at once to remedy it; and, as your lordships know, if the money is in the funds they are able to remedy it by the least expensive process in the world, obtained, as a matter of course, a *discreet*, which operates at once as an entire check over any one selling or dealing with the trust funds at all. But in the case of a joint-stock company, what confidence are we to have in the solvency of the parties, what possible means have the *cestui que trustent* of ascertaining that solvency? I submit none whatever. This board of directors may go on, as many of their predecessors have done, make out flourishing reports, pay 10 or 20 per cent. The books may be apparently right, they may show investments on landed security to an extent much more than sufficient to meet their disabilities, and yet the whole thing may be perfectly rotten at the core. These investments may turn out to be insecure, and, as has been proved in many instances, the managing directors may be making loans to some friends of their own on insufficient security, that becomes so serious that it must be concealed, and the only way to prevent a discovery is, by keeping the borrower upon his legs, and the result is a further loan upon an equally insufficient security. All this is concealed from the shareholders, and still more from the unfortunate *cestui que trustent*, who have no right to interfere with the company, and have not the slightest means of investigating the accounts. Therefore, I say, so far from having the means of knowing whether those intrusted with the management and possession of their property are solvent, the whole thing, so far as they are concerned, is in the dark. If your lordships know, as you must do, the way these companies have gone on with flourishing printed statements, but utterly insolvent, and still paying a large dividend, how much more is it in their power to delude those who are not their own shareholders, but who are obliged to trust to every report they may think fit to issue, without the slightest opportunity of investigation. Therefore, if the confidence and the solvency of a trustee is one of the requisites which is to guide your lordships' judgment, it is entirely wanting in this scheme, which is now brought before you.

"Then, the next requisite to which allusion

has been made, is, that the company must be subject to all the laws to which private trusts are liable. That is an argument which shows very plainly, that in almost all the cases which would in fact be committed to the charge of the company, the only result would be to necessitate double expenses. In the case of a simple trust no man would be so foolish as to pay one per cent., or subject his estate to such a reduction. In a case of complicated trust, if, as is said, on the other side, this company is to remain subject to all the laws at present in force, if, as Mr. Rolt has said, any one person who is dissatisfied can throw the affairs into Chancery, and if, as he truly says, the result is that the costs are paid out of the estate, will not that take place just the same if this company is entrusted with the affairs as it will if they if they are not? In all cases where a dispute arises one per cent. will be paid, then the Company being subject to the laws, these laws give to any one *cestui que trust* power to throw it into Chancery. It would be no answer to say it is already in the hands of Mr. Franks, and therefore, the Court need not interfere; the matter would go into Chancery and the parties would be put to double expense.

"The next point, on which great reliance has been placed, is the *guarantee*. It is said, whatever difficulty or danger may arise, here is this 300,000*l.*, which is a most ample guarantee, and any one must be unreasonable who is not completely satisfied with this. If the affairs are to be properly managed, if this is to be an immaculate company different from any one that has preceded it, no doubt the guarantee will remain; but it provides for the other event, that event of which the promoters of this Bill themselves cannot disguise, the extreme probability, namely, that this company and its board of directors will tread in the steps of their predecessors. If that event does happen what is the security of this fund of 300,000*l.*?

"Your lordships have been told by Mr. Franks that he calculates the expenditure at 10,000*l.* a-year, that he reckons he must get one per cent. on ten million in the first year. Your lordships are aware that if a trust is not intended to last for a number of years, no one would place it in the hands of the company. Taking it at 10 millions, or even one million a year, the trust being continuing, multiply that by 20 or 30 and you will find that these parties will have a control of money larger than that which is vested in the Court of Chancery. Then, my lords, I say that the guarantee assumes,—and I am entitled for the purpose of the argument, to say, that there may be some malversation, either by the board of directors neglecting their duty, or leaving it to some one managing director, or by some degree of jobbing taking place, which renders this guarantee necessary and essential; if that does happen, 300,000*l.* is a mere trifle compared with the sum that will be in their hands. As your lordships know, when a board of directors begin to deal with hundreds of thou-

sands and millions of pounds they go through their hands just as easily as tens. 300,000*l.* became a mere nothing in their hands. We see it every day in winding up these companies; they make one large advance, and then to secure that they make another. I say, if it were to happen that this company were to fall into a difficulty of that kind, so far from 300,000*l.* being a sufficient guarantee, it would be but a mere drop in the ocean, compared with the ruin in which they would involve the *cestuis que trustent*. If they once begin to conceal it they would be obliged to go on in their course of malpractices. Then, having regard to the money which they expect to have in their hands, this sum would be nothing in proportion to the amount of the liability. I need scarcely allude again to the evidence your lordships have heard, that even a company so careful as the Bank of England is found dealing with a company like the Copper Miners' Company, a company, as one of the witnesses says, with debts to the extent of one million.

"Then the next of the guarantees is the *official inspector*, and we have not yet been told how much of the 5,000*l.* is to go for the payment of this official inspector; but considering the salary that would be required by a party who is to perform an office of so great responsibility and trust as this, no doubt a very large proportion of that sum would have to be applied for that purpose. But what in effect is to be the duty of the inspector? Is he to go through every one of those trust accounts to see that every sum has been properly invested? Your lordships have heard from Mr. Franks that the most varied descriptions of investments and securities are now authorised by trust deeds; and, therefore, if the inspector heard of any security, the company would be enabled to say, that is authorised by the deed of trust, it may be an investment in Pennsylvanian bonds, and it might be said that is in pursuance of the trust. If his investigation is to be of the slightest value, he must read through every trust deed, see what is the precise mode of investment sanctioned by that deed, and whether it has been followed out. First, it would involve the investigation of every trust, and secondly, the taking of every trust account. How is it possible! What is it that it is intended he should do? Would it not be merely, as was suggested by one of your lordships, to go over the books, ascertain what is the amount of assets and what is the amount of their liabilities. Whether these investments were authorised, whether they are sufficient, whether or not they are altogether illusory, this official investigator would not be able to ascertain. It would come to be a mere farce. He would see that the books were properly made out, and no doubt, the more fraudulent, the more near to ruin they were, the more accurately would their books be kept up; no doubt they would make the most flourishing statements, their books would be correct, and apparently straightforward, but when the mat-

ter came to be substantially investigated, it would be found to be illusory. Take the case of any one of the companies, it would be found on inspecting their books that the real securities were so much, but when the real securities came to be investigated, they would be found to be of no value, and merely the source of additional litigation, annoyance, and expense to those who have been so misguided as to trust in them. We have seen this in the affairs of most carefully managed companies; I instance the Bank of England who have lately become copper miners and smelters in Wales. I may instance another very respectable company, the Law Life Insurance Company, which, it is now well known, has become wholesale dealers in selling land in Connemara. They were led by circumstances to make one advance and then another, and afterwards they were obliged to purchase the property under the Encumbered Estates' Bill, which they would now be happy to sell to any one who would buy it. It is said that the Board of Trade are to have the power of increasing the guarantee fund. The Board of Trade can know nothing but what they hear through the official inspector; and if I am well founded in the observation that his investigation would be a mere delusion, of course the power of the Board of Trade would be equally so.

"Now, my lords, we have one of the most striking instances in modern times of what is the value of this guarantee by means of official inspection in the *Eastern Archipelago Company*, a case to be found in the law books, which has been in your lordship's house. In that case the charter was to depend upon a sum of 50,000*l.* being actually paid up, and upon that being actually paid up and upon that being certified, the directors might go on. No shilling ever was paid.

[Some explanation on the other side was here given on this subject.]

"I am only using that with reference to the reliance to be placed upon these official investigators and the sanction of the Board of Trade. I say it has been tried, and in practice it has failed. The simple question was, whether the 50,000*l.* had been paid. I am indebted much to my learned friend, Mr. Rolt. He said they actually took upon themselves to discuss the matter. The result of their united wisdom was, that it was perfectly right to sign a paper which they knew not to be correct. It shows how very easy it is to make out these accounts, even with official sanction, which upon the face of them will appear correct and straightforward; how easy it is to obtain deliberate official sanction, and yet the whole thing be based on a perfect delusion.

"There is another point already adverted to, which I ought not to pass over, with respect to *executorships*. Your lordships are aware by this Bill, the company very properly confess that it would not be right to take upon themselves *executorships*. They disclaim that, and accordingly, they do not propose to ask for that power, but being aware how many trusts there

are which arise under wills, and involve more or less executorships, they are driven to argue that there is nothing easier than to define the distinction between executors and trustees. In point of theory, nothing is more easy. In reality, there is great difficulty. Take the case where there shall be, on the one side, assets, as to which it is doubtful whether they can be recovered, and on the other side, debts, the validity of which is questioned. Till both of those are decided, that which my learned friend calls a trust, never arises. There may be assets which it may be the duty of the executor to get in, which he may not be able to get in, which he may have to enforce by legal proceedings. And on the other hand, there may be claims against the estate of which the executor does not know, claims which may not be made for many years, which are brought forward at last; and, my lords, the effect of these claims existing for a long time, renders it in practice almost impossible to distinguish between the duties of an executor and those of a trustee. I admit, in theory, nothing is more easy, but in practice, it is almost impossible. Here, therefore, we have this company coming forward and admitting most properly, that they know, in some degree, what they cannot undertake; one thing they cannot undertake is the duty of an executor, confessing that, and bearing in mind that practical difficulty, I say, if they cannot undertake the duties of executor, neither can they undertake the duties of a trustee under a will.

"Even if it were, in your lordships' judgment, established that those evils existed which are stated, and that this company was calculated to remedy the evils, still I am prepared to show that the evils which will be introduced by such a measure as this, will greatly outweigh those which it is intended to remedy.

"First, your lordships are asked for the first time to give to this company unlimited power as a corporation to take and hold land. Now, my lords, whether it has been wise in the Legislature or not, from the earliest time, to prohibit that, it is not for me to argue; it is sufficient for me to say that it has been most anxiously guarded against throughout the whole course of the English Law. We find it carried to such an extent, that even in the case of insurance Societies, who are obliged to get power to take real securities, still in their charter a limit has been introduced. What you are asked by this Bill is, to set aside all that restraint for the interest and the benefit of these one or two companies. What is asked is, to place them in a position altogether different from that which the wisdom of Parliament and the decisions of Courts of Law have placed all other companies. Why is it that this company is to have that power to hold land to any extent, while every other corporation has been most anxiously fettered in that respect? If Mr. Franks' case were true, that the possession of landed estate involves nothing more than the receipt of the rents, there might be little practical weight in the objection; but when

we consider all the political, social, and moral obligations which exist between landlord and tenant, and I need not mention to your lordships the important questions which arise daily with reference to that relation. And your lordships are now asked to place the whole of this vast property, which they assume will come into their hands, in the management of this company, allowing them to deal with their tenants as they think fit. All these valuable estates of which they are to have the management are to be, in fact, under the control of this managing board of directors. I say it would be of the greatest importance to the country at large. It has been suggested by a question that was put by the noble chairman, how very important those relations are,—how continually they are recurring,—how necessary they are to be determined by the nicest care, discrimination, and judgment,—how impossible it is that that can be done by such a body as this. And by a body whose whole interest, when they have received their one per cent. for management, would be to bring it back to a mere mercantile transaction of getting the rents, and then to have done with it. So when they come to deal with these tens or hundreds of millions which will be placed within the control of this corporation, and consequently under the entire management of these 21 directors, it is impossible not to feel with alarm the power it will give them over the public funds of the country. The power given to them of jobbing,—the power of jobbing in sales and purchases to a large amount, as between the trust estates and their own stock,—their power of influencing the public market for their own benefit as individuals or as a company. I ask, why is this power to be given to this company? And if, on the other hand, your lordships are induced to say, "we do not intend to create a monopoly in favour of the South Sea Company," I ask where is it to end, or are we to have an increase of these companies, all of them equally bidding for property by holding out inducements to parties to commit breaches of trust—all equally jobbing in the funds,—all equally undertaking as they think fit the management of all these things.

"So, also, with respect to *trades*. They are to undertake every trust. We all know if, in its inception, it does not involve the carrying on of a trade, it often results in that, and they are to be made liable to the Bankrupt Laws. A testator may authorise an investment in a mine; they may be obliged to enter into possession as mortgagees in possession as the Bank of England has done,—and to carry on a trade. Then we are to have this board of directors, these eight or ten barristers, meeting at the South Sea House, undertaking all these varied trades and businesses, and all this without the slightest personal responsibility. The consequences of it are quite sufficiently apparent to make it unnecessary to enlarge upon them.

"Now, my lords, to come to the practical working of this measure, there are evils not of

the same magnitude, perhaps, but I think equally conclusive. I think it is perfectly clear if the matter were limited to bargains between testators, settlers, and the company, the Bill would have no operation at all, and so far as the South Sea Company is concerned, we have their own confession, that they cannot undertake executorships, and that would exclude almost every trust under a will. It is extremely unlikely that a party would pay one per cent. to be immediately deducted from the estate, because, in the inception of a trust every one supposes it will be easy; it is by some subsequent circumstances arising, not contemplated at the time, that the complication frequently arises. How is that provided for by this Bill? Your lordships will find by the 33rd section, which was so much relied upon by my learned friend, it is provided 'that all trustees acting under a deed or will shall be at liberty to transfer the trust funds to this company.' Your lordships will observe, in the first place, to take the simple case of a marriage settlement, with a trust for the husband and wife for life, and for the children afterwards; the husband and wife might be very naturally desirous to get a loan or an investment of some kind, and they would be unable to obtain it from the trustees, who would be unwilling to commit a breach of trust; what would be the obvious remedy? They would go to some persons more facile than their existing trustees, some body who will be willing to do what they require; and, therefore, their object would be to effect a transfer of the trust fund. Your lordships will observe, it is to be done with the consent of those who are of age, who are *sui juris*, and with the consent of the Court of Chancery, in the case of any person being an infant. Take the case which I assume, the whole of the persons would be of age, but the unborn children who are the real objects of the settlement, are altogether unrepresented. Under this clause the husband and wife have only to get the consent of the trustees, a consent which they would be likely to obtain, and then, without the slightest protection thrown over the unborn children, who are the real objects of the settlement, their purpose would be effected. Then the matter is to be taken into the hands of this trust company, and your lordships will observe, upon doing that, the trustees would receive absolute indemnification. I say that the principle upon which the Court has always hitherto acted, is most anxiously to guard the interests of the unborn *cestuis que trustent*. No application to the Court of Chancery will be necessary, they will get the consent of the trustees and those for whom the settlement was principally made, that is, the unborn children of any other persons interested under the limitations of that settlement, would be altogether unprovided for, the trust would be subject to the deduction of one per cent., without their having the opportunity of being heard or of objecting in the slightest degree.

"Your lordships are aware, if this company

is to be sanctioned, any number of these companies may be sanctioned, and we should have advertisements with a liberal commission given to solicitors and agents who would bring trust funds into their hands, and such a course would operate most prejudicially to those persons for whom the trust was made, and who by the principle of the Bill are altogether left out of consideration. My lords, assuming them to be all in existence, and all represented, we have here in the practical working of the measure brought forward by these persons who are so anxious to save expense, who express such a horror of the Court of Chancery—we have necessarily application to the Court of Chancery—in every instance they are to go the Court of Chancery, and if that is not meant to be illusory,—if Judges are to do, as they no doubt will do, their duty in the matter, it cannot be done in this off-hand and inexpensive way. Before the Judge would take upon himself to say, 'I think this is a proper case in which this trust estate is to be mulcted of one per cent., I must first ascertain who are the parties beneficially interested. I must know how many of them are under incapacity,'—all that would have to be proved and investigated before any Judge of the Court of Chancery could take upon himself to make any order in the matter. Then, my lords, when that is done, and when the estate has been conveyed to these gentlemen, they are to obtain the possession of large landed estates by these means. It will at once occur to some of your lordships, that difficulties would be raised in almost all titles by virtue of this measure, because your lordships will see whenever this company has got, as mortgagees or trustees, an estate into their hands, the necessary preliminary question will arise, 'Were you properly appointed trustees, and were the persons who ought to be there, either in person or by their representatives, properly represented, before the order of the Court of Chancery was made,'—if not, the whole thing is invalid, the trustees are not properly constituted, and the whole has failed. This will arise in every case. Your lordships will find whenever one is asked to take a transfer of an estate purchased, the first question the purchasing party will have to investigate is,—Was the proper order made in the presence of the parties, if not, the transfer is invalid, and all that followed upon it is invalid, and the equitable interest remains as before—the whole thing is void, and consequently the title dependent upon it is bad. That of itself, I submit, would be a difficulty and evil much greater than any of those which you have heard alleged in support of this Bill.

"My lords, it appears to me that the company, even if it were enjoying a monopoly, but still more if there were a number of companies entering into competition with each other, would in fact come to that which, as I believe one of your lordships has suggested, is done in America,—they would be guarantee societies. It is necessarily involved in the Bill. They

would say, "We will make these improper investments, and we will guarantee from loss on a certain consideration." That of itself is another great difficulty which it is impossible not to contemplate, because it is one which certainly will arise if companies such as these are to be established. One may be a little more particular than another. They may do what they say they will always do, refuse to do anything beyond the letter of their trust. The result will be that their business will fail, because as we find by the 33rd section, the acting parties are to be tenants for life—persons actually in existence, one motive will be to get the trust transferred to those who would answer their purpose. Those would be the companies who would be likely to be irregular, and I say they would be likely to be irregular, or would be likely to be lax, and the most business would be transferred to those companies who would be most lax. So far from its being a matter at all calculated to save expense, you find in every trust, in almost every instance, according to Mr. Rolt's argument, there are some persons not in existence who will be interested in the trust; according to Mr. Rolt's present argument all those persons are to be represented by the Court of Chancery. I will take it that my learned friend is right, that the clause does include unborn children. Then I say in almost every case there must be an application to the Court of Chancery, and there must be expense. If it does not include unborn children, as I say the words of the clause as at present drawn, do not; then, those persons for whose benefit the settlement was made are in fact altogether left out and unrepresented, and you are sanctioning a measure which will mulct the estate and subject it to a very considerable loss, without there being the least opportunity of their being heard or their interests consulted. In the event of any dispute arising, you will see the very unequal contest into which any *cestui que* trust would enter. It would be the interest of the company to let it be known, as some of the railway companies do, that they will fight every question to the uttermost. They would say, 'if you do not settle with us, we will carry you up to the House of Lords, and fight you, so as to render it to the interest of every one to compromise.' That would be the opposition offered to every *cestui que* trust. And instead of having a certain, immediate, and simple remedy, he would have to enter into an unequal contest with this powerful company, with unlimited funds, and with the certainty of being involved in a most harassing and protracted litigation. I say that, in itself, would be an evil which this measure would create.

"But there is one other section of the Act which shows the enormous evils that would be likely to arise from pursuing such a measure as this—I allude to the 29th section. This section provides for the event of the guarantee fund not being made up to the satisfaction of the Commissioners, or if there shall be any final decree of the Court of Chancery against

the company for fraud or malversation, as regards any trusts undertaken by the company, then it shall be lawful for the said Court, in any suit to be instituted in such Court for that purpose, to order the estate and effects of the company to be sold, and its affairs wound up.' This company, although now it may have very eligible directors—it is not reasonable to suppose—at all events, there is no certainty in the supposition that for any given number of years those directors will be more immaculate than the directors of other corporations. My lords, what is there to lead us to suppose that these corporations will be more immaculate than those from which the Legislature took away charitable trusts. If it is to be supposed, then, as a possible event, that a final decree should be made against this company for fraud, what would be the consequence of there being a decree for the winding-up of the affairs of this company? Contemplate the millions of which Mr. Franks has spoken; contemplate the number of estates in which they are to be interested; contemplate the mass of funds which they are to have standing in their names—it is positively frightful to contemplate such a suit.

"All these *cestui que* trustent would be interested, each would come claiming his share of the fund which remained belonging to this company. All would be necessary parties. All that we have hitherto seen of suits in the Court of Chancery for winding up companies under the Winding up Acts, would sink into positive insignificance compared with a suit so monstrous as this would be. Take the fact in the most limited way—assuming only ten millions—assuming the failure of the guarantee fund, or a decree for fraud or malversation, or any other instance upon which a decree for winding up is to be made, and for one moment contemplate the consequences. The costs of all the trusts in the country would be a mere trifle compared with the costs of such a suit. As to the business of the Solicitors and Barristers in the Court of Chancery, we should live upon it for centuries—such a thing would never end, because when we consider that we should have to divide ten millions, and seeing the number of persons connected with it, it is indeed difficult to imagine when it would even begin, and much more when it would end. They have thought it impossible to come forward without providing for such a possible event as fraud and malversation. They were obliged to offer to your lordships some means of remedy for that event, and this is what they have done.

"Now also, with respect to their mode of dealing with the trust funds. The questions which were put by the Committee elicited from Mr. Franks his view upon that subject. He took a very fair view of the subject, but still he could not help disclosing what was intended and which would be carried out by less scrupulous men than himself to a much greater extent. If your lordships will turn to the twenty-first page of the evidence you will find,

upon his being asked by one of your lordships what they would do with the profits which would necessarily arise by means of the employment of the money not required from time to time, or what is called a dead fund, what does he say? He first of all doubts what would be the proper application, but at last he thinks it would be a very proper application to use it in reduction of the expenditure. What is that? The company have already received this one per cent. It has therefore undertaken the burden of administering the trust; it has got a staff of servants, which it is bound to pay out of its own resources; some profit arises—a profit which the hypothesis assumes is a profit derived from trust funds under its control. But what does Mr. Franks say is the proper application of that? Why to apply it in the reduction of their own expenditure—that is, a reduction for their own benefit. He very fairly admits that is what they would do, applying it most directly for the benefit of the South Sea Company; so that, I say, from his own confession,—it must occur and does occur in all such companies,—we shall have them with their interests and their duties most absolutely conflicting. We have it avowed by the chairman of the intended company, in the fairest manner, that it is his intention to apply those profits which most certainly belong to the *cestui que trustent* for a purpose which is exclusively for the benefit of the company—in reduction of the expenses. It is true, my lords, it may enable them to make a smaller charge to those who subsequently join the company, but those who contributed the money will have no benefit from that. He says, I do not mean to return any part of the one per cent., but it will enable me to make better bargains for the future. That is what every tradesman would do. In so doing he would be applying the money in the most beneficial manner for himself. That is what you are asked to sanction on behalf of this public company for trusts.

“With respect to the evidence, I think I have shown that no sufficient proofs have been brought forward in support of this measure; but if your lordships think it satisfactory to examine them, there are gentlemen in the room of great experience, who will state there is no necessity for any such measure. I may mention the name of Mr. Henley, formerly President of the Board of Trade, and many gentlemen who must be known to your lordships, who are perfectly ready to meet the evidence on the other side, and are ready to state that there is no such difficulty in obtaining trustees, and that on the other hand, the appointment of a board of directors is calculated to be of the greatest danger; who can state what dangers have arisen by the improvident acts of directors, by that feeling of want of individual responsibility which will allow persons to sit at a board and do acts from which, if proposed to themselves individually to do, they would shrink with horror. When I said that I would not call evidence, it was because I thought these facts were so notorious, that I

should be improperly occupying your lordship's time in doing so. But when I see such evidence brought forward as has been brought forward by my learned friends—when I see a person like Sir John Patteson brought here to prove things which would appear to require no proof at all, I feel that I should not perhaps be discharging my duty properly, if I did not put forward one or two persons who would tell your lordships what they know on the opposite side. It is with that view, and only with that view, that I shall tender them to your lordships, although I feel that what they will state to you is no more than that which is within the manifest knowledge of all mankind. It is sufficient for me to say, that the reasons upon which this case is brought forward are insufficient, the evidence upon which it is attempted to be supported is still more insufficient, and I should, even if your lordships were against me upon all these points, still submit that, considering the magnitude and importance of the interests at stake, the importance of the principle involved in passing this measure, you will at least say, if such a thing is to be done, if we are to sanction this unlimited holding of land by a corporation, if we are to sanction the principle of trustees managing trust estates without personal responsibility or liability, and the other principles to which I have adverted,—at all events it should be done in a public manner—a public measure should be brought forward—it is inconsistent with what has hitherto been done—we will not allow this to be done by a private company, either for its own benefit, or as a means of introducing the same principle for the benefit of all. I beg your lordships to observe that the learned counsel who appeared in support of this measure have carefully abstained from telling your lordships whether they ask you to sanction this measure as a monopoly of all trusts, or whether it is to be brought forward as a principle that is to be applicable to all companies who can show that they have a competent board of directors, and the means of procuring a deposit of 200,000*l.* or 300,000*l.*, which is called a guarantee fund. Take it either way—either it is, I say, to establish a monopoly in favour of one company, or it is thrown open to competition; but then the evils will be still greater, because you will leave these companies running a race against each other, offering premiums to persons to bring their trusts within the supervision of the company, and the principal inducement which they will hold out will be the inducement to these tenants for life seeking loans or improper investments, and who will go to that company where they think they will get the greatest amount of accommodation, and that company where they will be met with the fewest scruples.”

LAW OF ATTORNEYS AND SOLICITORS.

STRIKING OFF ROLL.—NONPAYMENT OF MONEY.

A JUDGE's order was made on an attorney directing him to pay over to the plaintiff within 24 hours, certain moneys which had been received by him as attorney for the plaintiff, and the order was made a rule of Court. On his disobeying such order and rule of Court, *held* that an attachment was the proper course, and a rule to strike the attorney off the Roll was refused. *Guilford v. Sims*, 13 Com. B. 370.

CONDUCTING PROSECUTION WITHOUT AUTHORITY.

A motion was refused to strike an attorney off the Roll for acting without authority in conducting the prosecution of a prisoner for felony. *Crompton, J.*, said:—"I do not say that it is not an improper practice for an attorney to volunteer to interfere in a prosecution; but there is no precedent for an application to strike him off the Roll for such conduct. Since the object for which he volunteered was to get the costs, which are in the discretion of the Court, what can be easier than for the Court to check the practice by refusing the attorney his expenses in such cases?" *In re W. B. Davies*, 1 Lowndes & M. 207.

EXAMINATION OF WITNESSES IN CHANCERY.

VIVA VOCE, SINCE 2ND NOVEMBER.

FROM a parliamentary return ordered to be printed on 16th May last, it appears that the total number of cases for the examination of witnesses in the office of Mr. Kenyon S. Parker, on November 2 last, was . . . 9
And since November 2 43
— 52

Of which there are 18 pending.

In the office of Mr. Charles Otter, the number of cases on November 2 was . . . 7
And since November 2 51
— 58

Of which 19 are pending.

Mr. Parker has held 90 meetings in the several cases, and Mr. Otter 85 meetings.

EXPENSE OF ADMINISTERING CRIMINAL LAW.

SEEING that the attention of Parliament is urgently called to the expense of administering Justice in *Civil* suits and actions, it may be useful to state the substance of a recent return to the House of Commons of the costs of criminal proceedings incurred by the State:—

The amount paid for criminal prosecutions since the year 1846 in the counties and counties of cities and towns in *England and Wales*, was 1,242,522*l.* 12*s.* 5*d.*, of which 947,135*l.* 2*s.* 10*d.* was in felony cases, and 63,206*l.* 5*s.* 3*d.* in misdemeanor cases;

In *Ireland* the amount paid was 10,749*l.* 10*s.* 11*d.* in felony cases, and 9,180*l.* 5*s.* 8*d.* in misdemeanor cases;

Giving a grand total paid of 1,631,727*l.* 5*s.* 8*d.* in 7 years, being on the average 233,104*l.* per annum.

LAW FIRE INSURANCE SOCIETY.

ANNUAL REPORT OF THE DIRECTORS.

23rd May, 1854.

YOUR Directors have much pleasure in presenting to the Shareholders at their Ninth Annual General Meeting, a Report of the transactions of the Society for the year 1853, showing the continued prosperity, and progressively increasing business of the Society.

The following statement of the year's transactions, compared with those of the immediately preceding one, will show the increase that has taken place in the business of the Society during the year 1853.

The sum insured in the year 1853, was 16,474,127*l.*, in the year 1852 15,380,456*l.*, being an increase in the year 1853 of 1,093,671*l.*

The premiums received in the year 1853 amounted to 18,868*l.*, in the year 1852, to 18,078*l.*, being an excess in the year 1853 of 790*l.*

The aggregate amount of duty paid to Government in the year 1853 was 25,020*l.*, in the year 1852 23,605*l.*, showing an increase in the year 1853 of 1,415*l.*

The items of receipt and expenditure for the year will be read to the meeting from the detailed account examined and signed by the auditors of the Society; from this account it will appear, that the excess of receipt over expenditure for the year 1853 (after payment of 5,000*l.* interest to the proprietors) was 8,791*l.* 14*s.* 4*d.*, leaving a balance in favour of the Society larger in amount than in any preceding year.

Your Directors have, in their previous Reports, called the attention of the Shareholders to the comparatively small amount of claims made upon the Society for losses by fire, estimating them by the experience of other offices; in the year 1853 this amount is even less than in

any former year, allowing for the increased extent of business transacted; your Directors hope that this circumstance may have arisen from the caution used by them in their selection of risks, but, considering that the office has only had an experience of eight years, they dare not trust too confidently to the past as an index to the future.

An epitome is then given of the Balance Sheet, showing the position of the affairs of the Society, on the 31st December, 1853.

And the Report thus concludes:

At the Annual General Meeting of the Shareholders, held in the year 1851, your Directors declared (in addition to the interest upon the paid up capital of the Society, after the usual rate of 4 per cent.) a bonus of 2s. per share, amounting to 5,000*l.*; a similar sum was also appropriated as a bonus to the Shareholders in the year 1853, in addition to such ordinary interest; and your directors have the satisfaction of setting apart the same amount as a bonus for the present year.

Your Directors therefore declare an interest for the year ending at this meeting of 2s. upon each share, being 4 per cent. upon the paid-up capital of the Society, and also, in addition to such interest, a Bonus of 2s. upon each share.

This interest and bonus will be payable at the offices of the Society, on Monday the 10th day of July next, and on any subsequent day (except Friday), between the hours of 11 and 3 o'clock.

Your Directors have, in conclusion, the pleasing duty of repeating their acknowledgments for the great exertions made by the Shareholders generally to extend the business, and promote the interests of the Society, and they congratulate them on the present state and prospects of the Society: your Directors believe the Society to have been more successful than any other similar institution in so early a period of its existence, and they confidently anticipate that the continued efforts of the Shareholders will gradually place it among the leading Fire Insurance Companies of the Metropolis.

RIVALRY OF THE SUPERIOR AND INFERIOR COURTS.

THE *Times* has been amusing its readers with a description of the supposed rivalry between the "old shops" of Justice at Westminster Hall, and the new shops, in the form of County Courts, scattered over all parts of the kingdom. The Editor says,—

"It is a very fortunate thing for the country that the lawyers have at last been reduced to the condition of ordinary dealers in other commodities. There are two rival systems at work—the one being that of the Superior, the other of the County Courts, and the practitioners in either case are endeavouring to supply the public with justice of a marketable quality at the lowest possible figure. The great firms at

Westminster used to constitute a monopoly in former days, and would only sell at monopoly prices. Then it was that the County Courts were established, and these would soon have driven the old firms to the Bankruptcy Court, had not they in turn modified their scale of charges in order to keep their connexion together. This has been done so effectually that many good customers who had abandoned the Westminster establishment are now returning to it with a kind of penitent feeling, because, they say, they can get better justice at the old shop, and at a cheaper rate. Who knows to what length the generous strife may go? Time was when two rival hairdressers carried on their business in adjacent shops somewhere in the borough. Each of them in turn reduced his fee for tonsure by a penny sterling, until there was nothing left for reduction to act upon. Still the eager tradesman whose turn it was to take a decision did not hesitate for a moment,—he placed a bill in his window informing the world that mankind might come to his shop and have their hair cut for nothing. The next day his antagonist trumped even this card, by offering 'to cut the hair of any customer who might honour his premises *gratis*, and to give him a glass of gin into the bargain.' May we not hope to see the day when the lawyers will adjudicate upon our little differences without the disagreeable necessity of making payment in any form, and perhaps with the further inducement that both plaintiff and defendant will be required to discuss a cool magnum of claret with the Court and counsel engaged on either side?

"To show that our hypothesis is not of a merely jocular character, we would call attention to the condition of the law business of the country as it has stood before and since the establishment of the County Courts, according to the figures quoted by Lord Brougham in the House of Lords. For some years before the establishment of the County Courts about 120,000 suits were brought annually in the Superior Courts. Since the County Courts have been established these numbers have been reduced to 80,000 annually, or by about one-third. Here comes the curious point. A short time back an arrangement was made by which a great portion of the establishment expenses of the Superior Courts was thrown upon the Consolidated Fund, leaving only 50,000*l.* per annum to be borne in the shape of fees, whereas the fees or law taxes levied upon the suitors in the County Courts during the years 1852-53 amounted to more than 261,000*l.* yearly. Before these changes the business of the County Courts had been increasing so vastly that in 1852 there were 32,000 more suits brought in the County Courts than in 1851, whereas in 1853, after the fees at Westminster had been lowered, the increase in the County Courts on that year over 1852 only amounted to 10,000*l.* Let Lord Brougham's figures go *quantum valeant*. The fact that the County Court business had so rapidly increased in preceding years, may serve in some measure to explain

why at a given time the ratio of increase began to show signs of falling off; still, subalternately, the fact is, that there has been a certain tendency to return to Westminster, and that this tendency must in some considerable measure be referred to a reform in the scale of charges there. Lord Brougham, however, should not lose sight of the important fact that at Westminster the business, exclusive of Court fees, is conducted on a far more expensive scale. In that arena the best legal gladiators are to be found, and he who would win his cause must secure the service of one or other among them, and pay accordingly. We would now call attention to a very few figures, which will show more precisely the exact condition of the question as to the fees exacted in County Courts, without comparison with any other tribunal. These fees—presuming the figures to be true—are certainly excessive. There is good ground for raising the question, with the view of giving increased facilities to suitors in the County Courts. We must remain completely at variance with Lord Brougham on many points, but on this he will meet with the hearty concurrence of the public.

"In the course of the two years 1852-53 there were brought in the County Courts 479,000 suits annually for sums amounting to all but 1,500,000*l.*, of which 859,000*l.* was recovered either by judgments or sums paid into Court, in addition to sums paid merely upon service of the plaint. During these two years the fees levied upon the suitors amounted to more than 261,000*l.* yearly—that is, to 17½ per cent. upon the sums sued for, or to 30½ per cent. upon the sums recorded by judgments or paid into Court. The produce of these fees is no doubt employed with perfect propriety in the payment of the Judges and officers of the Courts, the expenses of Court-houses, &c. There is not, that we are aware of, any argument upon this point. The question simply is whether or no all the sum should be taken out of the pockets of the suitors, or whether it should be more or less thrown upon the general taxation of the country? Lord Brougham, following the lead of *Bentham*, is all for regulating the principle that the losing suitor should pay costs. In all cases, according to his view, the machine which is to give the oracle should be set in motion at the public expense, inasmuch as it is to every man's interest that justice should be attainable at the cheapest rate, and in the speediest manner. We would venture to suggest that the present is not a case for the discussion or application of any great principle. It is clear enough that it is politic, as well as just, to throw so much expense upon the losing party as shall at least deter suitors from bringing or defending suits frivolously or vexatiously. The very system of the County Courts, and the class of cases upon which they are called upon to adjudicate, render such a protection matter of absolute necessity. There is no defence interposed between the Court and the suitor, and so little of technical forms, that any man who wishes to

bring another into hot water can walk down to the office, set the machine in motion for himself, tell his own story, waste the time of the Court, and put an antagonist to the greatest inconvenience, however iniquitous or absurd his cause of action may be. If the County Court Judges are to be thrown thus to the mercy of the public they will become the mere scapegoats of civilization. They will be daily called upon to decide questions as to the age of *Madame Vestris*, or how many steps there are to the top of the *Monuments*, just as the custom is of certain among our weekly contemporaries. Whatever, then, may be the ultimate decision as to any question of proportion, it would be at least but reasonable to take some security that a machine which may be in some measure worked at the public expense should not be wantonly set in motion for any frivolous or unjust purpose. Still, if any of the instances quoted by Lord Brougham are correctly stated, and if they be fair specimens of taxation in County Courts, a man must be prejudiced indeed who would deny, or even for any length of time postpone a remedy. The Lord Chancellor, whose duty it was to answer Lord Brougham, while repudiating the universal application of *Bentham's* principle, seems to have admitted that there were rational grounds for inquiry. This inquiry will be made. At the same time, it is obvious that the present moment is most unfortunately chosen for urging any proposition which has for its tendency an increase of the public burdens. Whatever our opinions upon this case may be, we must postpone legislation upon it until quieter times. Such is one of the penalties to be paid for war. It would scarcely be fair to conclude these remarks without admitting freely that Lord Brougham is fairly entitled to claim for himself the credit of having promoted by all means in his power, and at all times, useful reforms in the law, and in the method of its administration."

TAXES ON THE ADMINISTRATION OF JUSTICE.

THE LORD CHANCELLOR'S SPEECH.

WE deem it important to record in these columns the remarks of the Lord Chancellor in the debate of the 16th May, introduced by Lord Brougham, and which we noticed in our last two Numbers.

The Lord Chancellor agreed with his noble and learned friend in thinking that it was the first duty of every State to supply the means for the administration of justice, and that, as a general proposition, those means should be furnished, in the first instance at least, by the country at large, and not by the suitors. If he did not concur with his noble and learned friend in thinking that it would be expedient at the present moment to pass the resolutions he had laid upon the table, it was, in the first

place, because this seemed a period peculiarly inopportune for any change which would make a great addition to the burdens of the country; and because, secondly, he thought that abstract resolutions of this kind, upon which their lordships were not prepared to act immediately, were in the highest degree inexpedient. As he had before said, he concurred generally with his noble and learned friend in the view he took as to the mode in which the funds for the administration of justice ought to be supplied, but there were many considerations which, in dealing with this question, could not be kept out of sight. The persons upon whom the cost of administering justice ought eventually to fall were those whose misconduct in violating the rights of others had led to the necessity of litigation.

In the first instance, it was unquestionably the duty of the Legislature to provide Courts of Justice; but he considered that, upon the strictest principle of right, the suitor who had been in the wrong, and whose wrong had caused the necessity of litigation, should be bound to contribute—in the nature of a fine—to the maintenance of the Court to which his injustice had rendered it necessary to appeal. He could not, therefore, object, even in theory, to such a portion of the fees levied upon suitors as was levied upon the wrong-doing suitors against whom decisions were given. It seemed to him consistent with every principle of right, and with the ordinary notions and feelings of mankind, that such persons should be bound to contribute to the maintenance of the Courts to which they had recourse. To such an extent was this principle carried in France, that every criminal was mulcted in the costs of the suit against him, which were made part of the sentence. The State should supply the tribunal; but it was fitting that the suitor—either the defendant, who had wrongfully withheld that to which the plaintiff was entitled, or the plaintiff who had wrongfully demanded that to which he had no just claim—should be required to contribute to the maintenance of the judicial system. His noble and learned friend had mentioned the fact that, at the present moment an inquiry into this subject was being prosecuted by a commission, from whom a report might very soon be expected.

He thought it would probably appear that the system of fees at present existing in the County Courts was a system not only very objectionable in its extent, but also with regard to the mode in which the fees were levied—the system having a tendency to saddle with fees those parties who were in the right instead of those who were in the wrong. This was undoubtedly a subject that required great consideration, and certainly a grievance existed that ought to be redressed. It must not be supposed, however, that complete justice could be done in this matter by merely directing their attention to the County Courts. Fees to a very large amount were levied also in the other Courts. His noble and learned friend

had said that the fees levied in the Superior Courts amounted to about 50,000*l.* a year. He (the Lord Chancellor) thought they exceeded that sum, but their amount was certainly very small in comparison with the fees levied in the County Courts. The amount of fees in the Court of Chancery was, however, very considerable, the fees levied in that Court during the last year having been nearly 100,000*l.*, a sum which would probably be exceeded during the present year. This subject had escaped the attention of her Majesty's Government. But they had deemed it proper to wait for the report of the County Courts Commissioners, and they had also considered that the matter ought not to be dealt with solely with reference to the County Courts.

It was their opinion that the whole subject should be investigated, and that a proper proportion of fees, so far as it could be ascertained, should be cast upon the different Courts. In the Court of Chancery, as he had stated, fees were levied to the amount of nearly 100,000*l.* a year. He knew it might be said that those fees were levied in a Court for rich suitors, while the County Court fees were imposed upon poor suitors, but that argument, he considered, was not at all founded on justice. The suitors whose wrong had occasioned the necessity of litigation were the persons who, in his opinion, ought fairly to be called upon to contribute to the maintenance of the Courts. Now, in 99 cases out of 100—he might almost say in 999 cases out of 1,000—occurring in the County Courts, the necessity of the suit was occasioned merely by the wrong of one or the other party. It might be that a customer wrongfully withheld from an honest tradesman the bill he owed, or that a person wrongfully claimed that to which he was not entitled. It was, therefore, consistent with the strictest principle of right that a very large portion of the cost of maintaining Courts for the determination of these claims should be borne by the party whose wrongful act occasioned the suits. He knew this could not be done in all cases, because they might have to deal with insolvent parties.

In the Court of Chancery, however, in 99 cases out of 100, the suits arose from the uncertainty of the law. The questions of law that had to be decided in the Court of Chancery were very difficult, and he thought, therefore, it was right that the Legislature, whose fault it was that the law was not clear, should contribute largely to the maintenance of that Court. He did not think that the 100,000*l.* contributed by fees in the Court of Chancery should be compared with the 260,000*l.* a year levied by fees in the County Courts, without taking into consideration the difference between the classes of cases decided by these Courts.

The exact state of the case with regard to fees in the County Courts would doubtless be ascertained when the Commission presented its report, and it was the intention of her Majesty's Government, when that report was before them, to look into the whole subject, and to endeavour to devise some plan under which the

State might contribute its proportion, and the suitors their fair proportion, to the maintenance of such Courts. He agreed with his noble and learned friend, that if any inequality with regard to fees existed, it was most unjust that such inequality should exist in the case of the County Courts, for he entirely concurred in the eulogium which the noble and learned lord had passed upon those Courts, and in the belief that the benefit they had conferred upon the community could not be exaggerated. The proceedings of the County Courts had been the means of suggesting, and would, he hoped, continue to be the means of suggesting improvements in the Superior Courts, and he trusted that the two systems might mutually act and re-act upon each other.

STATISTICS OF THE COUNTY COURTS.

ANALYSIS OF PARLIAMENTARY RETURN OF BUSINESS.

From 1st January to 31st December, 1853.

Number of plaints entered :	
Above 20l., and not exceeding 50l.	9,270
Not exceeding 20l.	475,676
	484,946
2. Number of plaints <i>tried</i> , or in which judgment was entered :	
Above 20l., and not exceeding 50l.	5,276
Not exceeding 20l.	249,458
	254,734
3. The number of days that the 60 Courts have sat, is 8,615. ¹	
4. The total amount of moneys for which plaints were entered, is . . .	£1,410,958
5. The total amount of moneys for which judgment has been obtained, exclusive of costs, is . . .	£707,551
And the amount of such costs, including expenses of witnesses, counsel, and attorneys, is . . .	174,083
	£881,634
6. The amount of moneys paid into Court, in satisfaction of debts sued for, without proceeding to judgment, is . . .	£107,854
7. The total of the Judges' Fund and officers' fees, is . . .	£216,277
Which consists of Judges' fees . . .	79,615
Clerks' fees, including those in cash book and in execution book . . .	79,615
Bailiffs' fees, including those on executions . . .	57,047
General fund . . .	37,241

Gross total amount of fees received £253,518

¹ This would make an average for each Court of 143 days, or 24 weeks, in the course of the year.

8. The total amount of moneys received to the credit of the suitors, was . . . £603,346
And the amount paid out . . . 602,098
9. The number of causes tried with the assistance of a jury, is 863, in 444 of which the party requiring a jury obtained a verdict.
10. The number of executions issued by the clerk of the Court against the goods of defendants, is 63,286.
- 11, 12. The number of judgment summonses issued was 47,704, of which 24,589 were heard by the Court.
13. The number of warrants of commitment issued by the clerk of the Court was 12,399, under which 5,416 persons were actually taken to prison.

The number of appeals entered under the 13 & 14 Vict. c. 61, from 1st January to 31st December, 1853, both inclusive, was 25, and 11 were pending on 1st January, 1853; of which 12 were confirmed, 7 were reversed, 10 were dropped, and the other 7 remain undecided.

The number of plaints entered by consent of parties under the 13 & 14 Vict. c. 61, s. 17, from 1st January to 31st December, 1853, both inclusive, was 34, of which 23 were tried.

The total amount received by the treasurers on account of the general fund for the same period, was . . . £39,403
And the payments . . . 41,020

RESULT OF THE TRINITY TERM EXAMINATION.

THIS Examination took place as usual, on Tuesday last, the 6th June. The Master, Sir F. Dwaris, addressed the Candidates on the nature of their professional duties, remarking that the services of the lawyer were indispensable in every step of a man's life :—in his contract on entering a profession; the settlement on his marriage; his purchase of or leasing a house; in forming a partnership; in making his will. He called their attention to the dignity of the Profession on which they were entering, which would confer honour on all whose conduct was marked by integrity and a diligent discharge of their duties. After much kind advice and encouragement, he concluded by admonishing them not hastily to bring up their answers to the questions, but to consider well the points they involved.

Several of the Candidates, who, having lodged their testimonials, were entitled to attend, were absent. The number was only 87, one of whom withdrew during the Examination, 11 were postponed, and 75 passed.

NOTES OF THE WEEK.

QUEEN'S BENCH SITTINGS.

THIS Court will, on Monday, the 19th day of June inst., and five following days, hold sittings, and will at such sittings proceed in disposing of the cases then remaining in the Special, Crown, and New Trial Papers, and will also, on Friday, the 30th day of June instant, hold a sitting, and will at such sitting only give judgment in cases previously argued.

EXCHEQUER OF PLEAS SITTINGS.

This Court will, on the 16th, 17th, and also on the 21st and seven following days of June inst. (Sundays excepted), hold sittings, and will at such sittings proceed in disposing of the business then pending in the New Trial and Special Papers.

LAW APPOINTMENTS.

The Queen has been pleased to appoint *William G. B. Shepstone, Esq.*, to be Civil Commissioner and Resident Magistrate for the division of Queenstown, Cape of Good Hope. —From the *London Gazette* of 6th June.

Mr. *James Eldridge*, Solicitor, has been appointed Town Clerk of Newport, Isle of Wight, in the room of Mr. John Henry Hearn, resigned.

ADMISSION OF SOLICITORS.

The Master of the Rolls has appointed *Thursday*, the 15th of June instant, at the Rolls Court, Chancery Lane, at four in the afternoon, for swearing Solicitors.

Every person desirous of being sworn on the above day must leave his Common Law Admission or his Certificate of Practice for the current year at the Secretary's Office, Rolls Yard, Chancery Lane, on or before *Wednesday*, the 14th inst.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

Regina v. Eastern Archipelago Company.
June 3, 1854.

ORDER FOR CANCELLING LETTERS PATENT.
—DRAWING UP.—PRACTICE.

Held, that the order for the cancelling of letters patent of incorporation consequent upon judgment for the Crown on a *sci. fa.* is to be drawn up by the Clerk to the Petty Bag, and not by the Registrar.

THIS was an application for the direction of the Court in reference to whether the order consequent on the decision in the Exchequer Chamber on the *sci. fa.* to repeal the letters patent of incorporation of the above company, for the cancelling thereof, was to be drawn up by the Clerk to the Petty Bag or by the Registrar.

J. V. Prior in support.

The Lord Chancellor said, that the order should be drawn up by the Clerk of the Petty Bag.

Hill v. Tollett. June 3, 1854.

CHANCERY OATHS' ACT.—POWER OF COMMISSIONERS AS TO PLACE OF ADMINISTERING OATH.

The oath to an affidavit in Chancery was administered by a Commissioner under the 16 & 17 Vict. c. 78, at the Accountant-General's Office, and which was neither the place of residence or business of the deponent nor of the Commissioner: Held, that the affidavit must be filed.

In this case it appeared that Mr. Keith Barnes, one of the London Commissioners for administering Oaths in Chancery under the 16 & 17 Vict. c. 78, had taken the affidavit in the Accountant-General's Office of the Court, and the question now raised was whether it could be received.

Follett applied for the direction of the Court on the officer refusing to file the affidavit.

Taylor for the suitors' fund.

The Lord Chancellor said, that he had already expressed an opinion, in which Lord Justice Turner concurred, and Lord Justice Bruce, although not exactly concurring, expressed no distinct dissent, that the taking affidavits was not confined to the respective places of business in the limited sense contended for, but meant within the distance of 10 miles. The affidavits taken in the manner in question must be received.

Master of the Rolls.

Francis v. Brooking. June 3, 1854.

HUSBAND AND WIFE.—EQUITY TO SETTLEMENT OF REVERSIONARY INTEREST WHERE HUSBAND INSOLVENT.

The wife of an insolvent was entitled to a reversionary interest in 470*l.* to her separate use, which the assignees sold for 35*l.*: Upon its falling in, an order was made for its payment into Court, and the dividends to be paid to the wife for life to her separate use.

It appeared in this suit that the husband of the plaintiff had become insolvent, and that his assignees had sold the reversionary interest in a sum of 450*l.* to which she was entitled in her own right, to the defendant for 35*l.* The property had now fallen into possession, and the plaintiff now asked for a settlement of the whole fund. It appeared she had three children who were nearly altogether dependent on her.

Follett and *Nichols* for the plaintiff; *R. Palmer* and *Karslake* for the defendant.

The Master of the Rolls said, that the reversion must be paid into Court and be invested,

and the interest be paid to the plaintiff for life to her separate use, with liberty to the parties interested to apply on her decease.

Vice-Chancellor Stuart.

Laslett v. Cliffe. June 6, 1854.

**EQUITY JURISDICTION IMPROVEMENT ACT.
—DECREE FOR SALE AFTER FORECLOSURE
DECREE.**

In a foreclosure suit by a first mortgagee, a decree was made for a foreclosure, but without the mortgagor's consent. On the petition of the mortgagor, and with the concurrence of the first mortgagee, a sale was directed under the 15 & 16 Vict. c. 86, s. 48, upon payment into Court of a sum of money by way of security for the debt and costs of the purchaser of the subsequent incumbrances.

THIS was a petition, on behalf of the mortgagor, for the sale of certain real estates, under the 15 & 16 Vict. c. 86, s. 48,¹ and for payment of the amount due to the plaintiff in this suit, and in which a decree for a foreclosure had been made in June, 1853. It appeared that the plaintiff was first mortgagee, and consented to a sale, and that the subsequent incumbrances had been purchased since the decree by a Mr. Jones.

Malins and Halliott for the mortgagor in support; *Bacon* and *G. Lake Russell* for Mr. Jones, contra, cited *Girdlestone v. Lavender*, 9 Hare, liii.; *Wayn v. Lewis*, 22 Law J., N. S., Chanc. 1051.

The Vice-Chancellor said, the question was, whether the Court had power to direct a sale after a decree for foreclosure. In the cases cited the decision was only that in the particular instances a sale was refused. It appeared that the foreclosure decree had been made ex-

¹ Which enacts, that "it shall be lawful for the Court, in any suit for the foreclosure of the equity of redemption in any mortgaged property, upon the request of the mortgagee, or of any subsequent incumbrancer, or of the mortgagor or any person claiming under them respectively, to direct a sale of such property instead of a foreclosure of such equity of redemption, on such terms as the Court may think fit to direct, and if the Court shall so think fit, without previously determining the priorities of incumbrances, or giving the usual or any time to redeem; provided that if such request shall be made by any such subsequent incumbrancer, or by the mortgagor, or by any person claiming under them respectively, the Court shall not direct any such sale without the consent of the mortgagee or the persons claiming under him, unless the party making such request shall deposit in Court a reasonable sum of money, to be fixed by the Court, for the purpose of securing the performance of such terms as the Court may think fit to impose on the party making such request." pressly without the mortgagor's consent, and

the first mortgagee, whose decree it was, concurred in the present petition. A decree for a sale would therefore be made—a sum of 1,000*l.* to be paid into Court by way of security for the debt and costs of Mr. Jones.

Court of Queen's Bench.

Regina (ex parte Conles) v. Vicson. June 3, 1854.

HABEAS CORPUS.—ATTACHMENT FOR CONTEMPT.—RETURN.

A habeas corpus had issued against a school-master, who detained a boy until the expenses of his and his brother's maintenance were paid. The boy was then sent to London under the special care of the railway guard to the mother: A motion to make absolute a rule for an attachment was refused for contempt—the affidavit to be used on the return.

It appeared that a habeas corpus had been granted in this case to bring up the body of a boy at school, who was detained there by the defendant upon the ground that the expenses of his and his brother's education had not been paid. The boy had been since sent up to London by railway, under the special care of the guard, and addressed to his mother. This motion was therefore made to make absolute a rule for an attachment for the contempt.

Huddleston in support.

The Court said, that the application must be refused,—the affidavit to be used on the return to the habeas corpus.

Regina v. Day. June 3, 1854.

**CORONER, ELECTION OF.—RIGHT TO VOTE
IN RESPECT OF EQUITABLE ESTATE.—
QUO WARRANTO.**

A coroner had been elected after a poll by a majority of votes, which arose from the votes of certain parties claiming a freehold by reason of the right of pasture over the waste land: Held, on special case, that under the 7 & 8 Vict. c. 92, s. 9, repealing the 58 Geo. 3, c. 95, the right to vote was to be according to the right to vote for knights of the shire, which must be a legal estate, and on a quo warranto judgment was given for the Crown.

THIS was a rule nisi for a quo warranto on the coroner of the district of Hemel Hempstead, Hertfordshire, to which office he had been elected in June, 1852, upon a majority of votes of certain persons exercising a right of pasturage over lands at Boxmoor, which had been purchased in the reign of Queen Elizabeth for the benefit of the inhabitants of the district. By the local Act passed in the 49 Geo. 3, the land was vested in trustees for the use of the inhabitants.

By the 7 & 8 Vict. c. 92, s. 9 (which repealed the 58 Geo. 3, c. 95), it is enacted "that every person to be so elected shall be chosen by a majority of such persons residing within such district as shall at the time of such election be

duly qualified to vote at the elections of coroners for the said county;" and s. 13 required the voter to swear he was a freeholder of the county. The facts now came on in the form of a special case.

T. Campbell Foster for the relator; *Bramwell* and *Lush* for the defendant.

The Court said, that the 7 & 8 Vict. c. 92, re-established the common law, and that the right to vote was to be according to the right to vote for knights of the shire, which must be a legal estate, and not, as was the case here, a merely equitable interest, and there must be judgment for the Crown.

Court of Common Pleas.

Smith v. Eldridge. June 3, 1854.

USE AND OCCUPATION.—PROVISO IN LEASE AS TO TIME FOR COMMENCEMENT OF RENT.

By the terms of a lease for seven years which had been executed, the rent was not to commence until certain alterations and repairs were completed, but the defendant occupied although they were not so completed: Held, that he was liable in an action to recover a reasonable sum for use and occupation.

THIS was a motion, pursuant to leave reserved, for a rule nisi to enter a nonsuit in this action for the use and occupation of a house. It appeared that by the terms of the lease for seven years which had been executed, the rent was not to commence until certain alterations and repairs were completed, and that the defendant had entered and occupied the premises, but had left in consequence of the alterations, &c., not having been done. On the trial before *Williams J.*, the plaintiff obtained a verdict.

Kerr in support.

The Court said that the plaintiff was not precluded by the agreement from recovering a reasonable sum in respect of the occupation which the defendant had chosen to have, although the alterations were not made, and the rule would be refused.

Bamford v. Chadwick. June 3, 1854.

WILL.—CONSTRUCTION.—DEVISE.—ESTATE TAIL.

An estate was devised to the testator's son and his heirs for ever with a gift over on the death of such son without leaving issue. Another estate was devised similarly to another son, with cross remainders, and with a general proviso that in case of the death of both without leaving issue, the estates should go to the testator's daughter: Held, on special case, that the sons took an estate tail, and that the defendants, who were devisees of the survivor, were entitled.

THE testator by his will devised an estate to his son and his heirs for ever, with a gift over on his death, if such son died without leaving lawful issue, and there was a similar devise to another son of a second estate, with cross-re-

mainders, and then followed a general proviso that in case of the death of both of the sons without leaving lawful issue, then the estates should go to the testator's daughter, the plaintiff's wife. It appeared that both the sons died without issue, and the defendants claimed under a devise from the survivor.

El. Hill and *Cowling* for the plaintiff; *Channell*, *S. L.*, and *Mellish*, for the defendants.

The Court said, that the sons took an estate tail, and that judgment must be for the defendants.

Barward v. Denney. June 3, 4, 1854.

LORD CAMPBELL'S ACT.—ACTION FOR COMPENSATION ON DEATH.—MISDIRECTION.

The defendant had left his horse and cart in the care of a boy who stood on the causeway about three feet above the road, and who was therefore unable to hold the horse which ran away and came into collision with the chaise of the deceased, who was thereby killed: Held, that the question of carelessness on the part of the boy was properly left to the jury, and a motion was refused for a new trial of an action to recover compensation under Lord Campbell's Act, on a verdict for the plaintiff.

THIS was a motion for a new trial of this action to recover compensation under Lord Campbell's Act (9 & 10 Vict. c. 93), on the death of the deceased by reason of the defendant's horse running away with his cart and coming into collision with the deceased's chaise. It appeared on the trial before *Williams, J.*, that the defendant had left the horse and cart in the care of a boy who stood on the causeway about three feet above the road, and that the boy could not hold the horse, and the question of carelessness on the part of the boy was left to the jury, who found for the plaintiff.

Byles, S. L., in support, on the ground of misdirection and that the verdict was against evidence.

The Court said, that the rule must be refused.

Wilkin v. Reed. June 4, 1854.

ACTION FOR DAMAGES ON MISAPPROPRIATION BY CLERK.—CHARACTER.—AMENDMENT OF DECLARATION.

In an action by the plaintiff to recover damages for the misappropriation of money by a clerk, in reference to whose character the plaintiff had applied to the defendant, the declaration alleged that the defendant had concealed the fact of the clerk having been dismissed for acting dishonestly, and represented that the principal reason was the coming into operation of the Common Law Procedure Act. The evidence showed that a misappropriation of money had been condoned, and that the excuse for dismissal was as mentioned, and the judge refused to amend the declaration by stating the clerk to have been guilty of dishonesty: On

verdict for defendant, held that the amendment was rightly refused.

THIS was a rule nisi to set aside the verdict for the defendant, and for a new trial of this action. It appeared on the trial before *Maule, J.*, that the plaintiff had applied to the defendant in reference to the character of a clerk and that the defendant was alleged in the declaration in this action to recover damages for the misappropriation of money, to have concealed from the plaintiff the fact of the clerk's dismissal for acting dishonestly, and represented that the principal reason was the alteration of the business consequent on the passing of the Common Law Procedure Act. It appeared that although the clerk had misappropriated a small sum of money the offence had been overlooked, and that the dismissal was for the reason stated. It was therefore proposed to amend the declaration by stating the clerk had been guilty of dishonesty, but the amendment was refused.

Watson and *Lush* showed cause against the rule, which was supported by *Crouch*.

The Court said that the amendment was rightly refused, and the rule was accordingly discharged.

Crown Cases Reserved.

Regina v. Pratt. June 3, 1854.

INDICTMENT FOR STEALING AGAINST DEBTOR ASSIGNING FOR BENEFIT OF CREDITORS.—CONTINUING POSSESSION.

The owner of certain laths had assigned all his property to trustees for the benefit of his creditors, but he remained in possession. On an indictment for stealing such laths, the jury found that the prisoner had removed them after the execution of the deed and with intent to defraud the parties beneficially interested, and not as agent for the trustees. The conviction was quashed on the objection that the possession of the property had never been changed.

It appeared that the prisoner had been the owner of certain laths and had assigned all his property to trustees for the benefit of his creditors, but remained in possession and carried on the business for the trustees. The jury had found, on an indictment for stealing laths by removing them, that he had removed them after the execution of the deed, and with intent to defraud the parties beneficially interested, and not as agent for the trustees. The prisoner was convicted.

Bittleston for the prisoner on the ground the possession of the property had never changed; *W. J. Willis* for the prosecution.

The Court said, the conviction must be quashed.

Regina v. Featherstone. June 3, 1854.

CONVICTION OF PARTY ASSISTING WIFE TO STEAL FROM HUSBAND.—LARCENY.

Held, that although a wife cannot be found guilty of larceny for stealing her husband's

property, yet if she commit adultery, and then steal the goods with the adulterer, he is guilty of felony, as she then determined her quality of wife, and was no longer recognised as having any property in the goods.

THIS was an indictment against the prisoner for stealing 22 sovereigns from the prosecutor, whose wife, it appeared, had taken them from his bedroom without authority, and given them to the prisoner, upon whose person they were found. On the trial, before *Talfourd, J.*, the prisoner was found guilty, but judgment was respited, for the opinion of the Court to be taken whether the delivery of the husband's goods by the wife to the prisoner with the knowledge by him that she took them without her husband's authority, was sufficient to support the conviction.

No counsel appeared.

The Court said, the general rule was that the wife could not be found guilty of larceny for stealing her husband's goods. But if she took away and converted to her own use his goods, it was no larceny, since they were one person. This was, however, subject to the qualification that if she committed adultery, and then stole the goods with the adulterer, she then determined her quality of wife, and was no longer recognised as having any property in the goods, and the prisoner assisting her in stealing them was guilty of felony: *Dalton*, c. 157. The conviction would therefore be affirmed.

Regina v. Larkin. June 3, 1854.

INDICTMENT.—AMENDMENT AFTER VERDICT.—NEW INDICTMENT.

In an indictment for stealing goods, the property of A. B., the second count charged the receipt of the property knowing it to be stolen, but by mistake the prosecutor's name, instead of the prisoner's, was used: Held, quashing a conviction, that the quarter sessions could not amend after verdict by substituting the prisoner's for the prosecutor's name, but that a fresh indictment against the prisoner might be preferred.

IN this indictment for stealing a quantity of beef, the property of Abraham Brooksbank, the prisoner had been found guilty on the second count for receiving the property, knowing it to be stolen, and on the prisoner's counsel moving in arrest of judgment on the ground of the mistake in inserting the prosecutor's name in such count instead of the prisoner's, the Court of quarter sessions amended the indictment.

Heaton for the prisoner; *Hale* for the prosecution.

The Court said, that the motion in arrest of judgment was right, as there could be no amendment after verdict, and the indictment was bad on the face of it, for not stating that the prisoner received the property knowing it to be stolen. The conviction would be quashed, but a fresh indictment must be preferred.

The Legal Observer,

AND

SOLICITORS' JOURNAL

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SATURDAY, JUNE 17, 1854.  
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PROFESSIONAL OPPOSITION TO BILLS IN PARLIAMENT.

JOINT-STOCK TRUST COMPANIES.

It was lately suggested by one of the active Law Societies in the Country, that, in order to oppose any measure in Parliament which in its consequences might injure the Profession, the best course for the practitioners would be to *petition in its favour*! The Law Reformers would then make a great outcry against it,—asserting, as they ignorantly do, that whatever injures the Profession, must benefit the Public. This sarcastic recommendation was perhaps induced by the attack made on the Attorneys by the Honourable Mr. Bouverie when the South Sea Company's Trust Bill was discussed in the House of Commons.¹ "The fact" (he said) "of the Bill being opposed by the attorneys was the strongest argument in its favour. The two great evils of the country were taxes and attorneys. What an attorney was, could not exactly be defined; but it appeared to him (Mr. Bouverie) that he was a professional gentleman who charged 13s. 4d. for doing something, and 6s. 8d. for doing nothing." This illiberal misrepresentation of the character and motives of attorneys and solicitors came with a bad grace from the brother of one of the governors of the South Sea Company; but notwithstanding the able remonstrances of Mr. Malins, Mr. Follett, and Mr. Mullings, the opposition was overruled and the Bill passed the House of Commons with a very insufficient modification of some of its clauses.

One of our weekly contemporaries rejoices at the success which has attended

the exertions of the Incorporated Law Society in opposing the Bill in the Upper House; but the learned writer, like Cicero, is never pleased with what other men do, and therefore condemns the arguments which the Counsel of the Society urged before the Lords' Select Committee. "He urged every argument that ingenuity could devise—except the true one," namely—"that the scheme contemplated a great injury to themselves;" (the lawyers) "it tended to make a monopoly of a considerable part of the business of the Profession."² The editor, it seems, would have conducted the case much better than Mr. Selwyn. He would valiantly have avowed his personal motives, and eschewed altogether the strong public grounds on which the project was impeached.

Now, consider for a moment the important points urged against the Bill,—which may be thus concisely stated:—

1st. That the Bill proposed to establish the legality of trading in Trusts, and making a profit out of that trade. 2nd. To establish the principle of limited liability of trustees, and to absolve them from all personal responsibility. 3rd. To sanction an unlimited capacity in a corporation to hold and manage land to any amount. 4th. To contradict a principle deliberately decided by the Legislature, that charity estates in trust should not be continued in the hands of corporations, but transferred to individual trustees. 5th. That if the evils suggested did in fact exist, this measure was not calculated to remedy them. 6th. Even if this Bill could remedy all or any of these evils, it would introduce new and additional evils of much greater magnitude. And finally, that the measure, involving such principles, ought not to be introduced by a private Bill, but if Parliament thought fit to alter the established law of the country, it should be done after due deliberation and as a public measure.

¹ See L. O. April 15.

² Law Times, June 10.

Having these cogent objections to the Bill, it would have been insanity to abandon them and depend on the argument against granting a monopoly to the South Sea Company, its solicitors and officers. The objections, indeed, are not confined to this one company, but to all joint-stock companies; and if the Bill had passed and success had followed, there would soon have been a host of them. A second company was already in the field, which, in order, as they supposed, to conciliate the Profession, held out the promise that solicitors, who were *shareholders* in the company, should be eligible to participate in the extensive law business which would arise out of the administration of trusts or the office of executors!

Our opinion is, that the Profession should not shrink from an appeal to the Legislature, whenever they have public grounds to state or the interest of their clients to advocate, and that they should not be deterred by the imputations which may be cast upon them of seeking to promote their own interests. They may justly maintain that the real interests of the Public and the Profession are identical; and that the due administration of justice cannot be secured without a competent and respectable body of practitioners; but it would be in vain to rest the objection to an alteration in the Law on the ground alone of professional interests.

As an instance of this course of proceeding, we may refer to the stand made by the Law Society, supported by their brethren in the country, on the Stamp Duties' Bill of 1850. The alterations which were effected in the scale of duties were peculiarly beneficial to the Solicitors, by the increased number of leases and conveyances which were called for, but the amendment of the scale was effected for the good of the community, and the result was, that whilst it relieved thousands from the previously oppressive burden of large stamp duties, the revenue suffered comparatively little, because of the vast increase in the number of transactions.

With regard to the appointment of *official trustees*, although not so objectionable as joint stock companies, we think the suggestion altogether uncalled for. It is an unfounded slander on the relations and friends of testators that they cannot be trusted. The occasional instances of breach of trust do not justify an alteration of the law. And the suggestion in regard to the failure of solicitors who are often associated with

others as executors and trustees, is peculiarly offensive and unjust. Amongst the 10,000 members of the Profession, how exceedingly rare are the instances of defalcation? When Mr. George Gregory, one of the witnesses, was questioned as to his knowledge of the failure of some of his brethren, he truly and emphatically said, "I think I am bound to say of my own Profession, and I am glad that I have an opportunity of saying it, that I think you will find less instances of breach of trust and confidence in that Profession, than you will find in any other body of men of the same and of similar responsibility." Mr. Selwyn also eloquently repelled the imputation of interested motives attempted to be fastened on the Law Society.³

When we consider the temptations to which professional men are exposed, and the opportunity they have of concealing their misdeeds, it is eminently to their credit that so few cases of misconduct arise. We may, however, admit that the public has a right to expect at their hands undeviating integrity. The fullest confidence is reposed in them. They are taught highly to appreciate the honourable nature of their professional duty; they act under the watchful eyes of their brethren, the scrutiny of the Bar, and the supervision of our venerated Judges. Habits thus formed are great helps in the hour of temptation, and the warm esteem and approval which a life of integrity is sure to gain, may well operate in sustaining them in their honourable course. We claim for them no exemption from human infirmity, but we maintain that they faithfully discharge their duties, and that it is altogether unnecessary, and would be unjust and impolitic to supersede them by official executors and trustees, even if the diligence and responsibility of such officers were guaranteed by the government.

We trust we shall hear no more of these joint-stock projects,—of governors, sub and deputy-governors, directors, executive councils, or wholesale solicitors, for the management of the private affairs of families and individuals. Let them exercise their ingenuity, and apply their capital in great public undertakings which require the association of large numbers, and the division of risk amongst many shareholders.

³ See p. 118, *post*.

EXECUTOR AND TRUSTEE BILL.

WE gave last week a full report of the speech of Mr. Selwyn against the South Sea Company's Arrangement and Trust Bill. We are now enabled to lay before our readers the objections to the Executor and Trustee Bill, comprised in Mr. Selwyn's answer to the arguments of Mr. Clark, with comments on the evidence adduced in support of this second Bill. After some introductory remarks, Mr. Selwyn said—

"This second Bill affords an instance of that sort of competition to which I adverted on a former occasion. Very properly disclaiming any intention of executing the very difficult office of administering the estates of testators, the South Sea Company acknowledge, by the Bill which they propose to your lordships, the incompetence of such a body as theirs, or, indeed, any corporation, to execute such trusts. The second company, my lords, is a little bolder. They come and tell your lordships, that, although the first company, with Mr. Franks and eight or ten legal gentlemen upon their board, do not think themselves competent, yet we, the directors of the second company say, 'do feel ourselves competent, and we hope to make it a principal part of our business.' I use that, to show the extent of the competition that would be likely to arise, if you once give your deliberate sanction to such companies, each would be going one step beyond his neighbour, and the result would be, that that one which is the most accommodating, and the least regardful of the objects of the trust, that company would be most in favour with tenants for life, and would be the company who would get the most business. They would go on trading against each other, and, ultimately, it would become like a race in committing breaches of trust, and they would come to guarantee themselves, in fact, against that. Your lordships will observe, that in all these Bills, there is introduced the same provision; that if the trustees merely transfer the property to this company, they are to be indemnified. That is the foundation of both the measures. Then we shall have the company offering what we have heard from one of the witnesses, commissions to solicitors and other parties,—they will offer more inducements, by way of loans, or investments, to tenants for life; they will get the money by some means or other in their hand, and then, by these acts which you are asked to sanction, the trustees are to be absolutely and finally indemnified.

"Now, my lords, it is with reference to that danger that those decisions, which have been the subject of the question which has been put, more than once by a noble lord, will become so important; namely, the question as to how far, upon the appointment of new trustees, the Courts go into the question of acts of former trustees. I think that the decision which the noble lord referred to is this: that where a

tenant for life has been to the trustees to ask them to commit a breach of trust, and the trustees refuse, the tenant for life says, 'If you do not, I know two or three who will,' and the old trustees know that the new trustees are appointed for that precise purpose, and they hand over the money to them knowing it will be misapplied, then the old trustees continue liable."

Lord St. Leonards:—"That is quite right,—that is not a new decision."

Mr. Selwyn:—"That is a most useful rule of law; and that is the very thing that will be evaded by the institution of this company; because, instead of going to the old trustees, and saying, 'We have found somebody else who will do it,' they will say, 'Transfer it to this company and you are indemnified.' And all that the tenants for life will have to do is, to find out which of these companies is most obliging, and least scrupulous, and the business will be transferred to them, and the breach of trust will take place. Also, there is the danger which will be involved in every title where real property comes within the administration of one of these companies. Because, my lords, in the present state of the law, all that the person investigating the title has to see is, that the new trustees are appointed in pursuance of the powers contained in the deed creating the trust. But when we look at each of these two Bills, the framer has found it necessary to provide in all cases for the intervention of the Court of Chancery, or some other means, to see that those persons who are not *sui juris* shall be properly represented. Then, if so, if one of these two companies are appointed new trustees, and there is a transfer to them and afterwards a sale, on every occasion, it will be necessary to state how far that section of the Act of Parliament has been carried out. The purchaser would have to consider, first, who are all the persons interested; next, he would have to consider whether they are *sui juris*; and then, whether they were properly represented or not before the Court. Every one of those questions must be decided before you can safely take the title when the property has once passed through this company. Mr. Bellenden Ker has told us something further. He says,—'As I understand it, all persons who are unborn who might by possibility take an interest, ought to be represented by the Court of Chancery.'

"Another difficulty would be thrown upon the person taking the title. He would say, 'I see there are tenants in tail and certain children, but there was another class of children, were they represented before the Court, and were they properly represented?' I think that your lordships would introduce the greatest possible difficulty and complication in titles, if you were to sanction such a measure as this. It is one which must inevitably arise in every case in which property or land is transferred to this company, and your lordships have heard to what an extent it is proposed to transfer property to this company.

"With reference to the difficulty of obtaining trustees, I think all the evidence upon that subject brought forward to day is as inconclusive as that which your lordships heard before. I went through the evidence on the former occasion, and therefore I do not go through it now. But I would say this, that even if such difficulties do arise, and even admitting the principle that the law does not prevent trustees from accepting remuneration; can it be said that there would be any difficulty in finding firms such as Quilter and Company, who we know do undertake to wind up the affairs of trustees, and who act as individuals under that individual and personal responsibility which is so necessary an ingredient. There is no doubt that persons could be found who would undertake these trusts, without the necessity of having a joint-stock company at all. But Mr. Ker has also said, that there is no objection to a corporation being trustees; and that the objection that I have mentioned as having been sanctioned by the Legislature with regard to municipal corporations where they were trustees for charity, was an objection of a political nature, and arose simply from the malpractices of these companies in having made use of them as an engine for purely political purposes. That was answered by one of the noble lords, who said, that that was not the principal ground of objection; the real objection was the obvious inattention and irregularity in the administration of the trusts of which those corporations, almost without exception, had been guilty, and the inevitable tendency in all corporations and bodies to leave their affairs to some one person, which, after a lapse of time, became mismanaged.

"But, my lords, it is very curious; it was only yesterday a case came before one of the Vice-Chancellors of the greatest possible experience, not only as having had a large business himself as a barrister, but also as having filled the office of Master in that Court, and now filling the office of senior Vice-Chancellor. I need not follow the example of Mr. Ker, in quoting from the report in the newspaper; but I was present in Court myself, and I can state the case was a charity which was perpetual, and a scheme was brought forward, among other things, to settle the manner in which new trustees should be appointed. It appears that it had been administered by a corporation,—the Governors of Crediton. It was proposed that the corporation should be appointed trustees; upon which the Vice-Chancellor expressed, although in better terms than I did on the former occasion, the same objection—namely, the absence of personal and individual responsibility, which was of the essence of the trust, and stated that a corporation could not be made liable in such a manner—the answer was made precisely as here: this is a perpetual charity, and you will have continually applications to appoint new trustees; whereas the expense of all that will be avoided if you will

appoint this corporation; but the Vice-Chancellor said,—'The absence of that individual and personal responsibility is so fatal to such a proposition, that though I know that applications must be made to the Court of Chancery, and although I admit that there is no objection to the individuals now constituting the corporation, I will, if you think fit, appoint the individuals who compose the corporation, but I will not appoint the corporation itself.' That, my lords, was his decision,—and that was the decision of a Vice-Chancellor having the greatest possible experience, and in a much stronger case than that which is brought before you of private trusts; because it was in its nature a perpetual and continuing trust, in which there was no power in any person to appoint new trustees, and therefore necessitating, on every occasion where the trustees were reduced to five, a reference to the Court of Chancery to appoint new trustees. Neither of those cases would occur in private trusts; because, in many cases, there is no occasion to appoint new trustees, and even where there is, there is a simple provision in a late Act of Parliament,—namely, for the appointment of trustees, at the expense, as one of the witnesses told your lordships, of a skin of parchment, or even less.

"But, my lords, even if the noble lord who answered that objection as to municipal corporations, and if the Vice-Chancellor Kindersley were completely wrong; and if the objections to corporations being trustees is to be confined simply to their having abused it for political purposes, what is to prevent similar abuses in the case of any of these corporations—what is to prevent persons in the South Sea Company buying up stock for political purposes, and using the enormous power they will obtain for this purpose, just as much as any municipal corporation, and much more, because the trustees of those municipal corporations are appointed by election entirely by their fellow-citizens, and they are not continuing bodies, whereas, these directors are to be continued or removed by the vote of their own shareholders, and there is nothing to prevent any political party purchasing stock and obtaining the appointment of directors, using all the powers they acquire for the same political purposes, which was found so objectionable in the case of municipal corporations; but then, my learned friend, Mr. Clark, says the remedy for all that is very easy, because they propose by the Bill, as they must, that they are all to be subject to the Court of Chancery. The answer to that is.—So were the old corporations; for the books are full of suits, showing injuries done by them, and constant and great breaches of trust which were remedied in the Court of Chancery, but the Legislature did not think that sufficient.

"Then, my lords, I would only refer to the questions which one of your lordships put to my friend, Mr. Clark, at the conclusion of his address, and which he was entirely unable to answer. Your lordships will bear in mind it was then suggested to him in what manner

he could propose to meet that objection, which arose upon the evidence of Sir John Patteson and some of the other witnesses, namely, that it was essential that there should be a board of management who would give their individual *personal attendance* to the matter, and who would not allow it to get into the hands of one person. What answer have we had to that? Have we had any in the evidence of to-day? I should suggest to your lordships to take the Bill and look at the names here proposed. Take, for instance, the first name, the Earl of Zetland—it is no extravagance to say that that name may be considered as purely ornamental. Take next the name of my learned friend, Mr. Headlam, an active Member of Parliament, a Queen's Counsel, in practice at the Bar, and also filling the high ecclesiastical office of Vice-Chancellor of the Diocese of Ripon. Is it possible for him to give his undivided attention? We have, amongst the rest, Mr. Clark himself. Your lordships have heard with what eloquence and ability he has argued the case of his society. I will leave your lordships to judge whether it is likely that the person whom you so heard will have time now to go into the City and manage the affairs of such a company as this. The same with the others. There is an entire absence of that provision which ought to be made to obviate the difficulty suggested by Sir John Patteson, which, if not got over, he says, will be fatal to the success of such a company.

“The next case my learned friend, Mr. Clark, put was, that of solicitors intrusted by a number of poor persons with a large amount of their savings, and misappropriating them,—that is entirely beside the point which you have now to consider. Those persons would not have a trust deed or any trust to be continuous and to be administered by a corporation. They merely chose a solicitor instead of going to a savings' bank, probably tempted by an offer of a little higher interest. Instead of depositing their money with a savings' bank, they went to a solicitor; but in the case put of those solicitors who misappropriated the funds entrusted to them, would those persons have gone to a joint-stock company, who would at once have mulcted them of one per cent., when their principal object was, that they might have their money more readily at hand without those incumbrances which the Savings' Bank Act has imposed upon persons who deposit their money. My lords, the case is entirely inapplicable to the present.

Then, with respect to the mode in which the company were to be paid for the services which were rendered, your lordships will recollect, my learned friend, Mr. Clark, differed entirely from the views of Mr. Franks. He considers that it will be much more beneficial, instead of deducting the one per cent., as Mr. Franks proposed in the outset or at the beginning of the trust, that a sum of money to be decided upon afterwards, should be deducted when the money is ultimately distributed; and accordingly, your lordships will find the Bill which

they bring in, proposes that that should be the mode of operation, for your lordships will find by the 31st section the commission is to be paid, ‘and such commission may be agreed upon between the executive council and the settlor, testator, or next of kin of any intestate; or in case no such agreement is made, then such commission shall be after such rate as shall at the time of the acceptance by the company of any trust, be actually provided by any bye-law of the company, or general resolution or regulation of the executive council sanctioned by the Board of Trade.’ Then, by the 32nd clause of this proposed company, your lordships will find—‘With respect to any trusts transferred from other trustees to the company, the commission in addition to such costs, charges, and expenses incurred by them in the administration of the trusts reposed in them as trustees or executors, are in the like cases in ordinary, entitled to be reimbursed, shall be of such amount as shall be agreed upon between the ecclesiastical council and the persons beneficially interested, if *sui juris*, or if incapacitated, as shall be approved by the said Court.’ I think your lordships will find that is a most material provision, because, in fact, in every case of this kind, you are first to have the expense of an application to the Court for the purpose of considering whether the transfer ought to be made at all—that would be the first expense necessary. You are then by the provisions of the Act, to have a deed declaring the trusts in the company. That is the second expense. Then, thirdly, under the 32nd clause there is to be in all cases where there is a person not *sui juris*, another application to the Court to determine what is to be the amount of commission; then there will remain a fourth expense, the commission itself; therefore, this scheme for saving expense, and rendering things more easy, would necessitate those four things—first, the transfer; second, the deed; third, the application to the Court to determine the amount of commission; and fourth, the commission itself.

“Now, when you come to consider the expense of those things—that the Court must be informed of all the circumstances of the trust—although the application may be made in a summary way within that Act before the Vice-Chancellor, it will be his duty fully to inform himself of all the circumstances of the trust, and to see whether it is right—whether all those who are not *sui juris*, or those who are not born, should have their property mulcted. The very investigation must necessarily involve considerable expense. I can foresee that what was intended was that which my learned friend, Mr. Clark, candidly admitted. He says, not merely for the purpose of the public, but also for the purpose of these applications, your lordships' names are to be made use of, and it is to be said, ‘All these objections were taken before a Committee, and such a committee, composed of such persons as we are now before, have sanctioned this; therefore, of course, the Vice-

Chancellor is not to feel himself at liberty to doubt or question the decision of such a tribunal.' If that is so, the reference to the Vice-Chancellor will become nugatory, but if there is any substance in this matter,—if it is intended that he is *bond fide* to exercise his judgment in the matter, he cannot exercise that judgment until he has made himself acquainted with all the facts and circumstances connected with the trust, and that, of course, cannot be done without great expense. In any other place and presence, I would state in quite as high terms as my learned friend, Mr. Clark, did, the importance which will be attached to the decision of this Committee, and I agree with him as to the high sense which the public would entertain of that decision, and I do not think it would be worth while to take the trouble of passing either of these schemes, but for what is proposed to be done,—namely, that the decision of this Committee is to be trumpeted abroad, and it will be said that your lordships have decided that a board of 21 directors are better trustees than individual trustees,—that you have decided they are persons competent to manage landed estates; and therefore it will be presumptuous in trustees, *cestuis que trustent*, or Vice-Chancellors to doubt the decision of such a Committee. That is what is intended, and that it is which makes it the more important that this Committee should hesitate before they arrive at such a decision.

"Then, my lords, there was one other observation which fell from my learned friend, Mr. Clark, which I confess I heard with some surprise and regret, because it was one which had been at once and gracefully withdrawn by my learned friend, Mr. Rolt,—namely, the interest of that body whom I represent. I think it is hardly necessary, before such a Committee, to notice such a point. It might as well be said that the Law Society, or even the Benchers of Lincoln's Inn or the Temple, when sitting, as they do most usefully, for the purpose of investigating into the character of any persons whose admission into the Profession of the Law may be in question,—that any one of those gentlemen would be influenced by any personal interest or jealousy in regard to the individual whose case is before them,—an imagination that would not be more unreasonable than to say that the body I represent are actuated in coming forward in the way they have done by any other motive than that of doing their duty under the charter which is granted to them,—knowing that if this company is sanctioned by this Committee, that decision will be put forward to the world in a way that will be most injurious to the public. I say, that if they considered their own personal and pecuniary interest, it would be altogether the other way, for I have shown to your lordships the numerous applications that must necessarily take place,—the number of things in which it would be necessary for *cestuis que trustent* to embark before they could even get to the board of directors, and in all of which cases they would be

obliged to employ solicitors, and then the applications to the Court of Chancery, all of which would be entirely novel, and in fact would be creating a new branch of business altogether. I need not say to your lordships that the Society and the individuals who petition your lordships are altogether above any such consideration.

"Then, with respect to the guarantee fund, which my learned friend, Mr. Clark, has eloquently compared to a cistern always filling, the observation I made before, is sufficient to dispose of that. The guarantee fund is altogether unnecessary, so long as the affairs of the company are properly managed. But the necessity arises when once any malversation or negligence begins, and then I say, all experience shows that when malversation or neglect or inattention once begins in one of these joint-stock companies, it proceeds at a rate and to an extent almost incredible. Then, I say, that if it does once begin, the guarantee fund, or any other such sum, whether it is 200,000*l.* or 300,000*l.*, as compared with the amount that will be at stake, will be nothing,—the cistern, be it ever so well supplied, will be dried up by the soles of the feet of the *cestuis que trustent* who will be coming and demanding their money from this company. As one of the witnesses shows, the proposed security would be very much less than that already possessed by the *cestui que trusts* in the amount of property pledged to them upon the individual and personal responsibility of the present trustees.

"With respect to the next observation of my learned friend, he says, as to the disclosure of family matters and their case before such a board, that is immaterial, because at the present time any will may be inspected for a shilling at Doctors' Commons. That, allow me to say, is an entire misconception of the question. It is not as to those family matters which appear in the trust deed, but it is those family matters which arise in the course of the execution of the trust—matters such as Mr. Henley described: the education of children, the marriage of children, the advancement in life of the children,—some of the sons of the family turning out profligate, and it being necessary to take some extraordinary measure, but still justified by the terms of the trust deed with reference to the state of circumstances which has then arisen, to get them abroad, to make some provision for them, or some different provision for other members of the family. Those are things that must be discussed,—those are things most painful to be disclosed to a board of directors; and, beyond that, it would be necessary, before that board of directors could arrive at a satisfactory conclusion, that they should have before them a plain and distinct statement of all the affairs of the family, so that they may be able to judge of every delicate circumstance that has arisen. That is a thing which the trustees originally appointed would do at once. They would know, *à priori*, all, or almost all, the

circumstances which had arisen. The great difficulty would be for *cestuis que trustent* to go before the board and to lay before them a plain statement for that purpose. They must incur some expense, and all experience shows that professional skill is required to make such a plain statement of the case as to render it intelligible to persons who have no previous acquaintance with the facts. That would be a solicitor in every such case—it would necessitate, at least, the employment of one solicitor.

“With reference to the Court of Chancery, as to which my learned friend, Mr. Clark, indulged in some facetious observations, in the presence of such a committee, it is not necessary that I should stand up as the humble defender of that Court; but with reference to the statement which I made, which was contradicted on the other side, as to the duties and office of a receiver—how they may get on in the Common Law Courts, I do not know, but I do not think it would be an answer for a Chancery barrister to say, that the practice of the Court was of such a petty nature that it is not necessary to make himself acquainted with it. What I said was, that when these things are taken into the Court of Chancery they are not brought into Court at all; counsel are never employed in them. By an order of the Court it is expressly provided, that if difficulties arise, it is not to be brought into Court, but all that is then done is, the receiver goes before the Judge’s clerk at Chambers, where counsel by no possibility can be employed, because no counsel may be employed before Judges’ clerks; therefore, all that is done is, the receiver goes to the Judge’s clerk, he gets his instructions from him and he acts upon them. My learned friend, Mr. Hope Scott, may not be so familiar with the Court of Chancery as I am; but that is the present law of the Court.

“Then, my lord, with reference to the Act of Parliament to which my learned friend, Mr. Clark, and also the last witness referred, which was passed on the occasion of the death of Mr. Maule, I need not tell, at least one of your lordships, that that was merely an Act for the purpose of vesting certain properties, which were in one individual by virtue of his office, in another individual who afterwards filled the same office. The principal object of that Act of Parliament was to avoid expense in the many suits pending where the Crown was interested as to personal property,—to avoid the necessity of having a revivor of those suits, on the death of an individual and the result was, that those many suits in which Mr. Maule was administrator, go on without any order for revivor, but his successor takes exactly the same place, but always, be it remembered, with the same personal and individual responsibility that Mr. Maule, his predecessor, had while he was alive. So far from that Act of Parliament being an authority for the application now before your lordship, if it has any application to the present case, it is

this,—although there was a trust, and although the matter was brought before the attention of the Legislature, they did not think fit to vest it in any corporation, but they said, ‘We will perpetuate the individual and personal responsibility of one man, and the person filling the office shall represent his predecessor without the necessity of any bills of revivor or any other process.

“Then, my lords, I would only observe upon this Act, that it contains a similar clause to the other one, with respect to the dissolution and winding up of the affairs of the company, either in the event of the guarantee fund not being sufficient, or of any breach of trust being committed, or being decided by the Court of Chancery to have been committed. Your lordships will find that in the 30th section of this Act, the only difference between the two is, that the proceeding which is contemplated to put an end to their affairs is a suit, and the decree is to be made upon a summary application by the Attorney-General. I think I need not any further dilate upon the consequences of such a suit. It would be a suit by the Attorney-General for the administration of a fund in which thousands of persons would be interested. No Court could be guilty of such injustice as to pay away a single shilling of that fund without first ascertaining who were the persons interested and in what proportions. They would be all necessary parties to that suit. It would be a suit as one of the witnesses very aptly described it, such as was never heard of; something more frightful than he could conceive; and yet that is contemplated in both of these acts.

“This gives rise to another observation. Such a suit will be necessary in the event of the company voluntarily determining to close their business. What is to prevent their doing it? We have Mr. Headlam and his coadjutors now willing to undertake this office. But suppose any dissension arose,—suppose they got tired of it, and wished to get rid of the business, and determined to close it and wind up their affairs: in any one of those cases such a suit must become necessary,—a suit that one cannot contemplate without the greatest possible alarm. In every one of those cases, the question will arise,—To whom do the funds now standing in the name of this company belong, and in what proportions? That, of course can only be contemplated in one winding-up suit, such as I have described, and independently of the probability which those two clauses contemplate, of a breach of trust having been committed and being found out, and a final decree being made against them in the Court of Chancery, which is not, certainly, a very violent supposition,—they bring it forward themselves, and experience shows that it has happened over and over again. That is one case. There is another: there is the case of a dispute between the company themselves. There is a third: their voluntarily retiring from the business. In each of those cases a winding-up would be neces-

sary, and all the consequences of such a suit would be inevitable.

"Then, my lords, with respect to the evidence that you have heard to day, I think it has been very strongly confirmatory of the views I have submitted to you. Take, for instance, the evidence given by Mr. Stein. He tells your lordships that in the society which he mentions at the Cape of Good Hope, there is a distinct provision that the funds of the company shall never be invested upon any security excepting land security. He says, at the outset of the company they kept every single trust fund quite distinct. That is according to the ordinary course, when an association starts first. They start in the most plausible and fair manner. They perform their duty in the manner pointed out by their charter or their trust deed, and everything goes on smoothly—but, even with respect to this model company, what is done? Why, within a few years they find this not a convenient mode—they mix up all the trust funds together.

"They found it inconvenient to do that which was their plain duty—to keep the moneys separate; they found they could make much more by mixing it all together; they found it so much more profitable and convenient that they undertook to guarantee every man his money. What real guarantee is that? He has no means of knowing what are the funds of the company. Their accounts have never been investigated; nobody has ever seen anything about them except themselves, and although they may have obtained perfectly good credit for 20 years in this colony, they may at this time be as perfectly insolvent as many of those companies who have paid 10 or 12 per cent. until the moment they failed and the bubble burst. Your lordships are aware of the peculiar circumstances of the colony. Like the two gentlemen who came before you from that colony, they are people going backwards and forwards from time to time, and of course they meet with great difficulties as to the settlement of their affairs. Their difficulties are so great, that it is the established law that if a man makes his will and appoints an executor or trustee, that executor or trustee has a right to charge a larger sum than that which this company would charge, therefore, so far from being a company to increase the amount payable for the execution of trusts, this company is formed to diminish the amount. But for them, the estate would be subject to greater charges. And, says Mr. Stein, I have made a bargain which will enable me to get my estate administered at a less expense than it would otherwise be administered, and also, my lords, he says, it is a small place, everybody knows his neighbour, therefore, the affairs of this company are, in fact, managed by this board of five persons, very much in the same way as a common trust would be managed by four or five trustees who may be named by the original testator. The promoters of this Bill, ably as their case has been conducted, must have felt they were greatly in want of evidence of weight to bring

before your lordships, when they went so far as the Cape of Good Hope, and bring forward such a society as this as their battle horse to support their measure. Mr. Macdonald told you that the society would manage his affairs at less expense than they would be managed if he had made a simple will. He also told your lordships that there was no investigation of the accounts, nobody knew anything about the investments, except themselves, or the state of their affairs. When we come to the next witness, Mr. Sutherland, there is another still more important illustration of the way in which these companies are conducted. He says he understood the terms of their deed to be, that they might lend upon any security; and he says, in point of fact, that they do lend upon security which, if Mr. Stein's evidence is correct, was altogether unauthorised. I will take it either way: either you have a company authorised to invest money which is not their money, but their *cestui que trusts'*, upon any security whatever. Nothing can be more prejudicial: or, taking it that Mr. Stein was correct, and that they were not authorised to lend, except upon landed security, we have in this model company exactly an instance of that which I urged as being the continual practice of joint-stock companies, the practice of continually deviating from what is the plain line of their duty. We find these companies beginning most accurately, making proper investments, but in the course of a short time departing from that, mixing up the trust funds, and lending the money upon security altogether unauthorised by their constitution. I say that is an exact instance of what here will take place. You will find all these companies will be bidding against each other. Although they will begin very regularly, they will depart from the purposes for which they were originally constituted, and conduct their business in a manner inconsistent with their Acts of Parliament or deeds, and also in a manner inconsistent with the proper security of their *cestui que trustent*.

"I think I need not trouble your lordships with any observations on the evidence of Mr. Headlam, or that of Mr. Wadeson. He comes not having considered the matter at all; and I use Mr. Headlam himself as an instance of a person who is willing to undertake to manage the affairs of this company, but from his position is altogether incapable of giving that close, constant, and personal attention which Sir John Patteson has described as being indispensable for the security of the public and of the *cestui que trustent*.

"With reference to this company as with the first, I shall submit to your lordships that they have not made out any case that will induce your lordships, upon these private Bills, to express an opinion—an opinion which is to be used, as your lordships have been told, most extensively—to be circulated through all the community, and to be brought forward even as a decision before the tribunals of the Court of Chancery. Your lordships are asked

to establish the legality—I must be allowed to use the phrase, although my learned friend, Mr. Clark, objects—the legality of trading in trusts and making a profit of that trade; your lordships are asked to establish the limited liability of trustees and the absence of personal responsibility in those trustees; you are again, without any sufficient evidence, asked in this measure to sanction a company taking an unlimited quantity of land, and powers to manage land by means of a board of directors; you are also asked to contradict that principle which which was laid down, as I have said, by the Legislature, and sanctioned only yesterday by that decision of the Vice-Chancellor Kindersley, that a corporation is not a proper body to whom to confide any trust, even although that trust may be in its nature a perpetual one, and a trust which involves the necessity of application to the Court of Chancery for the appointment of new trustees. Notwithstanding all that, the objections are so great, that the Courts have always hitherto refused to appoint corporations. Your lordships are asked, upon this evidence, to overrule all these objections. I submit no such case is made out; and that you will leave the promoters of this Bill, if they can make out a case for altering the law, to bring it forward in some general measure, which may be opposed by much more effectual means than I have been entitled to bring forward.”

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

COUNTY COURT EXTENSION ACTS AMENDMENT.

17 VICT. c. 16.

An Act to amend the Act of the Thirteenth and Fourteenth Victoria, Chapter Sixty-one, and the Act of the Fifteenth and Sixteenth Victoria, Chapter Fifty-four.

[2nd June, 1854.]

1. That the right and mode of appeal given by the 14th section of the Act of the 13 & 14 Vict. c. 61, as amended by the 2nd and 3rd sections of the Act of the 15 & 16 Vict. c. 54, shall extend to all cases decided after the passing of this Act in which jurisdiction is given by the 17th section of the said first-mentioned Act in consequence of the agreement of parties; but it shall be lawful, when both parties shall desire that the decision of the County Court Judge shall be final, to exclude such right of appeal, by expressing such their desire in the memorandum of agreement directed by the said 17th section to be filed with the clerk of the Court.

2. The provisions of the 18th section of the Act of the 15 & 16 Vict. c. 54, shall extend to all cases of petitions for protection from process made to a County Court under the provisions of the Acts of the 5 & 6 Vict. c. 116, of the 7 & 8 Vict. c. 96, and of the 10 & 11 Vict. c. 102, as fully as if the filing of every such petition had been required to be registered by the 18th section of the first-recited Act.

AMENDED BILLS OF EXCHANGE BILL.

THERE seems to be some extraordinary misapprehension regarding the effect of this Bill as last amended. One of our contemporaries assumes that all bills payable in the country, when dishonoured, must be sent up to London to be protested. This supposes that the London notaries must despatch their clerks to all parts of the kingdom, for they cannot delegate their functions except to the clerks in their office. It appears also to be supposed that there are no notaries except in London, whereas there are several in all the principal towns. By the 3 & 4 Wm. 4, c. 70, the limitation of the faculty of notaries (requiring an apprenticeship of seven years) applies only to London and within 10 miles thereof, and by the 2nd section attorneys previously enrolled in any of the Courts of Westminster may be admitted as notaries out of those limits,—the Master of the Court of Faculties being expressly authorised to admit a sufficient number of notaries for the convenience and accommodation of each district.

We observe that complaint is made that by the Bill, as amended, the County Courts have no jurisdiction under the Act; but it could scarcely be expected that those Courts should be empowered, like the Courts at Westminster, to determine whether execution should issue or not, or whether the defendant should be allowed to defend the action. Besides it will obviously be more beneficial to the public at large that there should be one place of registering dishonoured bills, instead of a registry at every County Court town.

It is further supposed that the notary-public will conduct the business in the Registry Office in London. This is surely a mistake,—his function will cease with the protest. The office will be attached to the Court of Common Pleas, the proceedings in which are necessarily confined to the attorneys of that Court. Upon the registration the party will be entitled to an order of Court and judgment, with stay of execution for six days.

It is very doubtful whether the public will gain anything by this alteration of the Law. It may be a question, indeed, whether the expense will not be greater than under the Common Law Procedure Act. There will be,—1st, the expense of noting the bill; 2nd, of protesting it; 3rd, of registering it in the new Office of the Common Pleas; 4th, of the Judge's order; 5th,

of the judgment. These expenses must be incurred whether in town or country. There must be a professional charge for preparing the document which has to be left with the registrar, and of course for attending him and payment of fees of office. In the case of country bills, after they have been presented, noted, and protested in the town where they are payable, they must be sent up to London to be registered.

Wherever there is a defence to the action, the proceedings will go forward as usual. The registration of the protest will be like an interlocutory judgment. A summons before a Judge must be taken out by the defendant, supported by special affidavits, showing a *prima facie* ground of defence,—the costs of which, with the attendance before the Judge (sometimes by pleaders or counsel) will be equal to the expense of a writ of summons and declaration.

NEW ORDERS IN CHANCERY.

TIMES OF PROCEEDING.—PRACTICE AT JUDGES' CHAMBERS.—PRODUCTION OF DOCUMENTS.—GUARDIANS.—OFFICE COPIES.—TAXATIONS, &c.

1st June, 1854.

THE Right Honourable Robert Monsey, Lord Cranworth, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Sir John Romilly, Master of the Rolls, the Right Honourable the Lord Justice Sir James Lewis Knight Bruce, the Right Honourable the Lord Justice Sir George James Turner, the Honourable the Vice-Chancellor Sir Richard Torin Kindersley, the Honourable the Vice-Chancellor Sir John Stuart, and the Honourable the Vice-Chancellor Sir William Page Wood, doth hereby in pursuance of the Acts 15 & 16 Vict. cc. 86, 87, and in pursuance and execution of all other powers enabling him in that behalf, order and direct:—

That all and every the orders, rules, and directions hereinafter set forth shall henceforth be, and for all purposes be deemed and taken to be, General Orders and Rules of the High Court of Chancery, viz.:

I. If the 14 days within which, pursuant to the Orders of the Court, a defendant is bound to file his affidavits in answer to a motion for a decree, or the seven days within which the plaintiff is bound to file his affidavits in reply thereto, or the nine weeks after issue joined, within which the evidence in any cause to be used at the hearing thereof is to be closed, or the month after the expiration of such nine weeks within which a witness who has made an affidavit intended to be used by any party to such cause at the hearing thereof is subject to cross-examination, shall expire in the Long Vacation, the time for the several purposes aforesaid respectively is hereby extended to the

fifth day of the ensuing Michaelmas Term, and is to expire on that day unless enlarged by order. Provided always, that in cases where the above-mentioned periods of 14 days and nine weeks respectively, shall be extended by virtue of this order, the seven days within which the plaintiff is bound to file his affidavits in reply and the month during which a witness is subject to cross-examination, shall be respectively taken to commence from the expiration of such extended period.

II. Any Judge of the Court whose chambers may be open for business during any vacation, may issue summonses for the purpose of any proceeding before the Master of the Rolls or any Vice-Chancellor at chambers after the vacation.

III. The same course of procedure as is now in use as to the production of documents ordered to be produced before the hearing of a cause, shall extend and be applied to the production of documents ordered to be produced after the hearing of any cause or matter.

IV. In all cases in which the certificate of the Chief Clerk is to be acted upon by the Accountant-General of the Court without any further order, such certificate may be signed and adopted by the Judge on the day after the same shall have been signed by the Chief Clerk, unless any party, desiring to take the opinion of the Judge thereon, obtains a summons for that purpose before 12 of the clock on that day. And the time for applying to discharge or vary such certificate, when signed and adopted by the Judge, is to be two clear days after the filing thereof.

V. In all cases in which any person required to be served with notice of a decree or order pursuant to the eighth rule of the 42nd section of the Act 15 & 16 Vict. c. 86, may be an infant, or a person of unsound mind not found so by inquisition, the notice is to be served upon such person or persons, and in such manner as the Judge to whose Court the cause is attached may direct.

VI. Guardians *ad litem* appointed for infants, or persons of unsound mind not found so by inquisition, who shall be served with notice of any decree or order, are to be appointed in like manner as guardians *ad litem* to answer and defend are now appointed in suits on bills filed.

VII. At any time during the proceedings at any Judge's chambers under any decree or order, the Judge may, if he shall think fit, require a guardian *ad litem* to be appointed for any infant, or person of unsound mind not found so by inquisition, who has been served with notice of such decree or order.

VIII. In all cases in which notice of a decree or order shall be served pursuant to the eighth rule of the 42nd section of the Act of 15 & 16 Vict. c. 86, the notice so served is to be entitled in the cause, and there is to be endorsed thereon a memorandum in the form or to the effect following, that is to say, "Take notice, that, from the time of the service of this notice, you [or, as the case may be, the infant, or per-

son of unsound mind] will be bound by the proceedings in the above cause in the same manner as if you [or, the said infant, or person of unsound mind] had been originally made a party to the suit, and that you [or, the said infant, or person of unsound mind] may, by an order of course, have liberty to attend the proceedings under the within-mentioned decree or order. And that you [or, the said infant, or person of unsound mind] may, within one month after the service of this notice, apply to the Court to add to the decree or order."

IX. The charges for copies of pleadings, and other proceedings and documents furnished under the General Orders of 25th October, 1852, Order number one, sections two, three, and four, to a person admitted to sue or defend in *forma pauperis*, or to his solicitor, by or on behalf of any other party shall be at the rate of 1*d.* per folio. Provided always, that if such person shall become entitled to receive dives costs, the charges for such copies shall be at the rate of 4*d.* per folio; and nothing shall be allowed in taxation in respect of such charges, until such person, or his solicitor, shall have paid or tendered to the solicitor, or party by whom such copies were furnished, the additional 2*d.* per folio. But this proviso shall not apply to any copy which shall have been furnished by the party himself, who is directed to pay the costs, and not by his solicitor.

X. The charges for copies furnished by a person admitted to sue or defend in *forma pauperis*, other than those furnished by his solicitor, shall be at the rate of 1*d.* per folio.

XI. Expenses incurred in consequence of affidavits being prepared or settled by counsel, are to be allowed only when the Taxing Masters shall in their discretion, and on consideration of the special circumstances of each case, think such expenses properly incurred; and in such cases they are to be at liberty to allow the same or such parts thereof as they may consider just and reasonable, whether the taxation be between solicitor and client or between party and party.

XII. Any party who may be dissatisfied with the allowance or disallowance by the Taxing Master, in any bill of costs taxed by him of the whole or any part of any item or items, may, at any time before the certificate is signed, deliver to the other party or parties interested therein, and carry in before the Master an objection in writing to such allowance or disallowance, specifying therein, by a list in a short and concise form, the items or item, or parts or part thereof objected to, and may thereupon apply to the Master for a warrant to review the taxation in respect of the same.

XIII. Upon the application for such warrant, or upon the return thereof, the Taxing Master is to reconsider and review his taxation upon such objection, and he may, if he shall think fit, receive further evidence in respect thereof; and if so required by either party, he is to state, either in his certificate of taxation or by refer-

ence to such objection, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto.

XIV. Any party who may be dissatisfied with the certificate of the Taxing Master as to any item or part of an item which may have been objected to as aforesaid, may apply to the Court by motion or petition for an order to review the taxation as to the same, and the Court may thereupon make such order as to the Court shall seem just; but the certificate of the Taxing Master shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid.

XV. Such motions and petitions are to be heard and determined upon the evidence which shall have been brought in before the Taxing Master, and no further evidence is to be received upon the hearing thereof, unless the Court shall otherwise direct.

NOTICES OF NEW BOOKS.

Notes on the Principles and Practice of Prize Courts, by the late Judge Story: with Documents and Forms in the Court of Admiralty in England. Edited by FREDERICK THOMAS PRATT, D.C.L., Advocate, Doctors' Commons.

THIS publication is necessary and well-timed. It will be found very useful to advocates and proctors and to persons interested in shipping, and to the officers and solicitors employed in Admiralty business in the out ports.

The letter and paper by Lord Stowell and Sir John Nicholl will be read with great pleasure by every lawyer.

The notes of the late truly eminent Mr. Justice Story is the only account of Prize Courts in our modern times; it includes all the English and American and other cases, and therefore deserves publication at this time in England.

It includes, also, the Queen's declaration of war with Russia, a declaration as to neutrals, orders in Council as to embargo, &c., &c.

ENFRANCHISEMENT OF COPYHOLDS.

MANOR OF KENNINGTON, ETC.

WE subjoin a copy of the important petition, now in course of signature, from the copyholders in this manor, for an equitable enfranchisement of their copyhold estates, which the lord of the manor and his officers have at present the power, but little or no inclination, to effect.

We shall only notice two cases out of a host

which no man can number, to substantiate the necessity of a compulsory enfranchisement in this manor:—

Arden's Case.—He bought a ground-rent of 60*l.* a year issuing out of premises let for 90 years from 1790. A fine of 644*l.* was demanded by the officers of the duchy, who subsequently proposed to reduce it to 235*l.* if paid before next Court, that is nearly four years' fine, the original demand being a fine of 10 years.

Sawyer's Case.—He purchased a ground-rent of 8*l.* 10*s.* on a lease granted in pursuance of a licence from June, 1796. The fine anterior to and during the reign of Wm. the 4th would have been 17*l.*, but a fine of 147*l.* was demanded, of which 27*l.* 5*s.* was afterwards returned, retaining 119*l.* 15*s.*, a sum equal to 12 years' income,—thus depriving the party out of 12 years' rent of the 14 years unexpired of the lease.

To illustrate the absurdity and injustice of demanding a compensation for enfranchisement on the rack-rent instead of the ground-rent, which alone is received by the copyholder, it may be stated that a ground-rent of 10 houses, at 5*l.* each, amounts to 50*l.* a year, and the rack-rent, receivable by the builder, amounts to, say, 500*l.* a year; the compensation, therefore, for enfranchisement, based on the full annual value or rack-rent would amount to 3,000*l.*, almost the full value of the entire property.

"To the Honourable the Commons of Great Britain and Ireland in Parliament assembled,

"The humble petition of the undersigned Copyholders of the Manor of Kensington, in the parish of Lambeth, in the county of Surrey.

"Sheweth,—That the said manor of Kensington is part of the possessions of the Duchy of Cornwall, and that *His Royal Highness the Prince of Wales, as Duke of Cornwall,* is lord of the manor in right of the said duchy.

"That your petitioners are respectively copyhold tenants of the said manor, holding lands of inheritance parcel of the same to them and their heirs by copy of court roll, according to the custom thereof.

"That for a very long period, dating back even to the time of the great Lord Bacon and Sir Edward Coke, the most eminent lawyers, statesmen, and political economists, including (along with the two high authorities referred to) the Lord Keeper Guilford, the Lord Chancellor Cowper, Archdeacon Paley, the late Sir Robert Peel, Bart., Lord Brougham, and the present Lord High Chancellor, and Lord Chief Justice of England, have in the strongest terms pointed out the evils and enforced the necessity of the abolition of copyhold tenures.

"That your petitioners have heard with great satisfaction, that a petition of aldermen (including the present Lord Mayor) and every-men of London to her Majesty the Queen on this important subject, has been referred by Lord Viscount Palmerston to the Lords of the Treasury, who have assured the petitioners that the subject of such petition, as regards copyholds held of the Crown, is now under their lordships' consideration.

"That the Commissioners appointed by his late Majesty King William the 4th, to inquire into the Law of England, as to the Real Property, reported, after full inquiry and mature deliberation, that the laws and customs relating to copyholds, from their great variety and uncertainty, as well as their unsuitableness to the present state of society, were the cause of much *litigation and extortion*; that from the intermixture of such lands with those of freehold tenure *much needless expense and difficulty*, in the transactions relating to the sale, settlement, or disposition of real property were occasioned; and, as a still greater evil, that such laws and customs prevented or checked improvements, directly interfered with the profitable enjoyment of the soil, and *materially diminished the public wealth*; for which reasons the Commissioners gave it as their opinion, that on compensation to the lords, an abolition of copyhold laws would be for the benefit of both themselves and the tenants.

"That a Select Committee of your honourable House was appointed on the 27th day of July, 1838, to consider of the enfranchisement of copyholds, and to report their opinion thereon. That such Committee on a resolution moved by the late Sir Robert Peel, did accordingly report that they were satisfied that copyhold tenure was *ill adapted* to the wants of the present day and a blot on the judicial system of the country—that the peculiarities and incidents of copyholds were at once *highly inconvenient* to the owners of the land and *prejudicial to the general interests of the State*;—that where the fine payable to the lord is upon the improved value, it operates as a *tax* upon the capital of the copyholders, and is a *direct check* to all building and all agricultural improvements; and after detailing other disadvantages and objections, the Committee stated they had come to the conclusion that the *abolition of copyhold tenure* would not only be a *great public benefit*, but should be made, if possible, a *national object*; and they recommended that it should be effected under the Commissioners for the Commutation of Tithes.

"That a second Select Committee of your honourable House was appointed in the year 1851, to consider the same important subject; who adopted similar views to those of the former Committee, and reported that it was highly desirable for the interests of the lords, the copyholders, and the public—that *the entire enfranchisement of copyhold tenures* should be effected as soon as practicable on equitable terms, due regard being had to the rights and just claims of all parties. The great advantage and utility

of such a general measure of enfranchisement thus appear to be placed by the high authorities above referred to, beyond the possibility of any further doubt or question.

"That the copyhold lands within the said manor of Kennington are, from their contiguity to the metropolis, peculiarly capable of being greatly improved and largely augmented in value by means of enfranchisement, which the various hardships and grievances complained of would be effectually remedied; and that your petitioners and (as they have reason to believe) the general body of copyhold tenants of the said manor, are most willing and anxious to enfranchise their copyholds upon fair and liberal terms; but that, notwithstanding the recommendation of the Real Property Commissioners, of the decisive and strongly expressed opinions of two successive Committees of your Honourable House, your petitioners find themselves almost entirely debarred by the exorbitant terms demanded for enfranchisement within the said manor, from availing themselves of the benefit of such recommendations and opinions. For your petitioners have to complain that the surveyors and agents acting heretofore under the Council of the Duchy of Cornwall, instead of adopting the equitable principle which pervades the Act for the Commutation of Tithes, have proposed, as the terms or price of enfranchisement, the payment by the copyholders of the said manor of sums very much larger than the actual value of the manorial rights of the lord, and far beyond what are usually exacted by the lords of other manors, and, in fact, in the said manor of Kennington the copyholders have been generally refused any enfranchisement whatever.

"That from the want of a more general and stringent system of copyhold enfranchisement, the alienation and free disposal of all property of this description has been greatly impeded, and the public revenue as well as the general interests of the community at large, thereby seriously injured, and that the unreasonable impediments and difficulties which (contrary, as your petitioners are well assured, to her Majesty's gracious intentions) have been thrown in the way of the enfranchisement of copyholds within the said manor of Kennington, and likewise (as your petitioners have ascertained) in all the other manors belonging to the Crown and to the two Royal Duchies of Cornwall and Lancaster, have unfortunately caused the loss of a most influential example in the highest quarter for the promotion of the public good.

"That the copyhold tenure, in all its diversified and innumerable instances most absurd varieties and customs throughout the kingdom, is almost the last remaining vestige

of an unenlightened and oppressive feudal age, and entirely out of harmony with the improved legislation and progressive institutions of the present time.

"Your petitioners therefore humbly pray, "That the enfranchisement of all copyhold lands holden of manors belonging to the Crown or the Duchies of Cornwall and Lancaster may, through the recommendation or other constitutional interposition of your Honourable House, be offered to the copyholders, on fair and equitable terms of adjustment and compensation for the manorial rights; and that as a most important national measure of legal and social reform, in union with the spirit of the present age, and in strict accordance with the recommendation of the Commissioners and the reports of the two Select Committees above referred to, a Bill may be forthwith introduced into your Honourable House, with a view to the passing of a law for the general and speedy enfranchisement of all the copyhold lands in the kingdom, upon similar fair and equitable terms of adjustment and compensation for the manorial rights.

"And your petitioners will ever pray, &c."

"June, 1854."

LAW OF ATTORNEYS AND SOLICITORS.

BILL OF COSTS IN PAUPER SUIT. — EFFECT OF DISPAUPERING ORDER.

THE defendant, a claimant in a Chancery suit, retained the plaintiff as his solicitor, who agreed to conduct it upon the ordinary terms, and not to press the defendant, but wait until he should come into possession of certain property, to which he was entitled on the death of his father. An order was obtained on July 29, 1851, from the Master of the Rolls for leave to sue *in forma pauperis*, but the defendant's father died on October 31 following, but the plaintiff, although aware of his death, had taken no steps to get his client dispaupered. An order was made on December 8, whereby the defendant was dispaupered from the time of his father's death. The bill in Chancery was dismissed in March, 1852, and this action was brought for services performed therein. There is an item in the bill of costs for a payment to the law stationer for copying and for parchment and paper, and also for counsel's fees, which, however, had not been paid.

On a motion, pursuant to leave to reduce the verdict for the plaintiff,—

Parke, B., said, "We never entertained any doubt that an attorney cannot charge for counsel's fees which have not been paid. In point

¹ It may be mentioned that His Grace the Duke of Sutherland and T. W. Giffard, Esq., offered just and equitable terms to the copyholders of Bilston, Willenhall, and Wolverhampton, as stated in the Report of the last Copyhold Committee.

of law they are gratuities; and as he has not paid them, with respect to them he is not a farthing out of pocket. It is, therefore, perfectly clear, that he is not entitled to that item. The next point is, whether the bill is to be reduced by the amount charged for business done whilst the pauper order was clearly in force, that is to say, up to the 31st of October, 1851. The plaintiff was appointed to act as the defendant's attorney in the Chancery suit, under the 1 Hen. 7, c. 12, which expressly says, that poor persons shall have writs, 'therefore nothing paying for the seals of the same nor to any person for the writing of the same:' and that the Chancellor shall assign clerks to write the same writs ready to be sealed, and also learned counsel and attorneys for the same, without any reward taken therefore; and it provides that if the writ shall be returned before the King in his Bench, the justices there shall assign counsel and likewise appoint attorney for the same poor person or persons, and all other officers requisite and necessary to be had for the speed of the said suits, which shall do their duties without any reward for their counsel's help and business in the same. The plaintiff, therefore, cannot charge for any matters falling under this description, as for skill and advice, which would include all necessary business, as for preparing the requisite documents, although he would be entitled to be reimbursed money out of pocket. The next question is, whether the plaintiff was entitled to charge for business done between the 31st of Oct. and the 8th of Dec., as to which interval the Master of the Rolls decided that, as between the plaintiff and defendant in that suit, the defendant had been improperly litigating as a pauper at a time when he was not one in truth. The Master of the Rolls did not decide as between attorney and client. That matter was not before him, but the question was between the litigant parties to the suit, and the order had reference to them alone. The Master of the Rolls, therefore, did not decide any question as to fees. *Prima facie*, every step which was taken between those dates was taken gratuitously, and the plaintiff had no right to make any charge on that account. If, then, the pauper is liable for this part of the claim, it must be by virtue of some contract; but there was no such evidence; and indeed the case was not rested upon that ground at the trial; and if it had, I think it would have failed, as being a contract without consideration, and consequently *nulum pactum*. The plaintiff clearly had no ground for charging the defendant on his original agreement. The plaintiff, therefore, cannot recover for his services between the 31st of October and the 8th of December. The only remaining question is, what charges for stationery the plaintiff could make while the pauper order was thus in force. He is entitled to charge for paper and parchment necessary for carrying on the suit. It was said, he was also entitled to recover the stationer's charge for copying. In the absence of any authority upon this point, I

am of opinion that he cannot. I think that the law contemplates that the attorney will take that duty upon himself, and therefore he ought not to incur those charges. He should draw his instructions for counsel, and write the brief fairly in the first instance, so as not to make it necessary that it should be copied. If he gets it copied, he does so on his own responsibility. If there had been any decision to the contrary, I should have felt bound by it, but that does not appear to be so. The plaintiff, therefore, can recover for the value of the parchment and paper only." *Holmes v. Penney*, 9 Exch. R. 584.

LAW OF COSTS.

OF QUO WARRANTO AGAINST CORPORATE OFFICER.

WHERE a person, wrongfully elected to a corporate office has accepted it so that the office is full, the Court, in making absolute a rule by his consent for a *quo warranto*, refused to make it one of the terms of the rule that any further proceedings should be at the cost of the relator, although the defendant did not oppose the rule being made absolute with costs up to the present time, and was willing to resign or disclaim. *Crompton, J.*, referred to *Regina v. Sidney*, 2 L. M. & P. 149, and *Regina v. Earnshaw*, 3 E. & B. 143, *n.*, overruling *Regina v. Morton*, 4 Q. B. 146. *Regina v. Hartley*, 3 Ellis & B. 143.

OF MANDAMUS ON COUNTY COURT JUDGE.

On a plaint being brought against Mr. Holland, the alleged owner of a ditch, to recover a sum of money expended by the guardians of the union in enforcing an order of justices under the Nuisances' Removal Act (11 & 12 Vict. c. 123), he applied at Chambers for a prohibition on the ground that he was not the owner of the ditch, when the Judge suggested that the case should stand over for the opinion of the Court, but the application was not proceeded with. The plaint was then tried, and the plaintiffs obtained a verdict, the County Court Judge acting in the belief that a prohibition had been refused, but he refused to make an order for payment of the amount. A rule was then made absolute for a mandamus upon the County Court Judge upon reference to section 3 of the Nuisances' Removal Act (reported 2 Ellis and B. 188).

In discharging a rule *nisi* on Mr. Holland to pay the costs of the rule for a mandamus, *Erlé, J.*, said,—“The late cases have generally given the costs of obtaining the writ to the

successful party; and though it is a matter for the discretion of the Court, it is said that they ought to be given unless there are strong grounds to the contrary: *Regina v. Mayor of Newbury*, 1 Q. B. 751. Taking that to be the rule, I have come to the conclusion that Mr. Holland has shown sufficiently strong grounds for holding him to be exempt. The objection that title to land was in question was true, and would have ousted the jurisdiction if it had not been for a recent enactment. It was an objection to the tribunal which did not decide the contest, and did not prevent its decision upon the merits. It had the sanction of the Judge of the County Court, and it had in a degree the sanction of Mr. Justice Crompton, at Chambers, who provided for an application to the full Court for a prohibition, as appears by the statement in *Regina v. Harden*, 2 E. & B. 188.

"The objection had again the sanction of the County Court Judge upon the second hearing, when he prepared a case for the application so provided for, and himself stayed the proceedings, in order that it might be made. In all these applications, as the law was then understood, the defendant was entitled to succeed, and the application for the mandamus was supported only by a reference to a subsequent statute, which had not been adverted to, and then first received a judicial construction." *Regina v. Harden*, 1 Lowndes & M. 214.

QUESTIONS AT THE EXAMINATION.

Trinity Term, 1854.

I. PRELIMINARY.

WHERE, and with whom, did you serve your clerkship?

State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

Mention some of the principal law books which you have read and studied.

Have you attended any, and what, law lectures?

II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

State what actions at Common Law are founded in contract, and what on tort; adding whether they are respectively local or transitory?

Suppose the cause of action to amount to an indictable offence, is a civil action maintainable?

If a man marry a woman to whom he is indebted, and to whom he has given a security

for the debt, what becomes of the debt and of the security; and how can this be prevented?

When an action of contract is brought against one only of several partners, what step ought the defendant to take, and what forms are required?

Before what hour must service of pleadings, notices, summonses, orders, rules, and other proceedings be made, to prevent the service being deemed as made on the following day?

Where an attorney who has given an undertaking to enter an appearance has not appeared in pursuance of his undertaking, what will be the consequence?

When must an application be made to compel a plaintiff to give security for costs (in ordinary cases)?

After a delay of proceedings for one year, what notice must now be given by a party who desires to proceed?

Where a summons is applied for to set aside proceedings for irregularity, what must be stated therein?

In order to change a venue what is it now necessary to obtain?

Within what time must a party called upon by notice to admit documents, either admit or refuse to admit?

If a new trial be granted without any mention of costs in the rule, what is the doctrine as to the costs of the first trial?

Where a plaintiff or defendant has obtained a verdict, or a plaintiff has been nonsuited, within what time may judgment now be signed and execution issued (unless otherwise ordered)?

What is the usual mode of submitting a question to arbitration?

When a party gives a warrant of attorney, by whom must it be attested and what must the attestation state?

III. CONVEYANCING.

What are the denominations and qualities of estates in land less than fee simple? State them severally.

What words will create or pass a fee simple estate in a will or deed respectively? And as to a will, what difference in this respect is made by the Statute for the amendment of the law as to wills?

An estate is limited to the use of A. for life, and after his death to the use of the heirs of his body. What estate does A. take?

What do you understand by the doctrine of estoppel?

When were fines and recoveries abolished, and how may an entail be barred at this day, 1st, by tenant in tail in possession—2nd, by tenant in tail in remainder?

What are the usual powers of a tenant for life over the estate?

Do estates held in joint tenancy, tenancy in common and in coparcenary, differ in any, and what, essential particulars?

As the law now stands, are trustees to preserve contingent remainders necessary? Explain their use in settlements.

A feoffment made to A. and his heirs to the use of B. and his heirs in trust for C. and his heirs; explain the operation of the Statute of Uses in the above limitation.

When is real estate considered as personal, and personal as real?

In what cases, and in favour of what persons, are bonds or covenants to resign a living legal?

Explain the origin of copyholds, and by what Statute was the further creation of manors prohibited?

What is the difference between a jointure and a dower, and how is the former constituted, and how does the latter arise?

Show the outline of an ordinary farming lease for seven years.

Give the outline of an ordinary lease for 21 years of a private house in London.

IV. EQUITY AND PRACTICE OF THE COURTS.

A. contracts, in writing, to sell an estate to B., and afterwards refuses to convey. What remedy has B. in a Court of Equity?

Will a Court of Equity, in any, and what cases, give any, and what relief, where a contract for sale of land has not been reduced to writing?

State generally the practice in Equity in presenting, serving, and bringing to a hearing, a petition in a cause.

State the different modes in which evidence may be given in support of a bill in Equity.

In what cases will a Court of Equity grant an injunction, and what is the effect of an injunction?

A. obtains a conveyance of an estate from B. by fraud, and A. sells and conveys the estate to C. Under what circumstances will a Court of Equity give B. any, and what, relief?

Will a Court of Equity relieve against acts performed under mistaken notions of law?

State the different modes of defence to a bill in Equity.

By what summary process can a creditor of a deceased person procure the administration of his real and personal estate?

Can a Court of Equity in a foreclosure suit direct a sale of the mortgaged estates?

Can a Court of Equity in a bill by a mortgagee for sale of the mortgaged estates decree a foreclosure?

A trustee has money in his hands for the benefit of a widow for life and afterwards of her children. By what summary proceedings may he effectually relieve himself of the trust?

A Court of Equity will restrain a tenant for life, without impeachment of waste, from committing some kinds of waste. What are they?

What is the nature and effect of a bill of interpleader?

How may a decree of a Court of Equity for payment of money, and for conveying an estate respectively, be enforced?

V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

What description of persons are liable to be-

come bankrupt, and liable to the Bankrupt Laws as such?

Are there any, and if any, what cases in which property in the possession of the bankrupt, at the time of his bankruptcy, does not pass to his assignees? State instances.

In what case, and under what circumstances, would an assignment, made by a trader, be an act of bankruptcy? State the cases, and the circumstances to be attended to when considering such a question.

When an assignment, made by a trader, is held to be an act of bankruptcy, what will be the effect of it, and in what, if any, case will it be upheld?

State the particular cases in which goods of the bankrupt, seized by one of his creditors under an execution, can be held by the creditor or sheriff?

If a trader at the time of his bankruptcy be possessed of leasehold property, subject to a rent, what will be the consequence of the bankruptcy as regards the liabilities and rights under the lease?

If the assignees desire to obtain for the bankrupt's estate the value of leasehold premises belonging to the bankrupt, what course should they pursue so as to attain that, and without making themselves liable as assignees of the lease?

Are there any, and if any, what, cases in which payments or transfers made by a trader before the filing the petition for adjudication can be set aside, or the money or property recovered for the benefit of the estate?

What steps are necessary in order to vest the trader's property in his assignees under the bankruptcy?

Are there any means other than a bankruptcy by which a trader can get discharged from his debts?

What are the consequences of a petitioning creditor compounding with the trader after filing the petition for adjudication on bankruptcy?

Can a bankruptcy once opened be compromised, and the proceedings stayed by consent? State the instances and mode of proceeding.

If a bankrupt wishes to dispute the bankruptcy, within what time must he do so, and what are the steps to be pursued?

By whom, or by what authority, is the certificate of conformity granted?

At what stage of the proceedings can the certificate of conformity be obtained?

VI. CRIMINAL LAW AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

Over what places does the jurisdiction of the Central Criminal Court extend?

What is a writ of procedendo?

What is a certiorari?

State the different modes of proceeding in criminal cases.

Define the offence of embezzlement.

What is the nature of a writ of *quo warranto*, and how is it obtained?

What is the highest Court of criminal jurisdiction?

By what mode can the proceedings under an indictment be stopped against the will of the prosecutor?

Explain the nature of a writ of mandamus.

Explain the nature of a writ of habeas corpus, and how it is to be obtained.

How many witnesses are necessary to prove an offence, and is there any difference in this

respect in the nature of the offence to be proved?

What is the effect of a pardon by the Crown?

In what mode, and in what cases, may articles of the peace be exhibited?

Can a warrant for the apprehension of an offender be in any case executed on a Sunday?

Can the attendance of a witness resident in Scotland or Ireland be compelled to attend a trial in England?

RECENT DECISIONS IN THE SUPERIOR COURTS.

Master of the Rolls.

In re Constable of Swinton. June 14, 1854.

RAILWAY COMPANY. — COSTS OF AMENDMENTS ON PETITION FOR PAYMENT OF DIVIDENDS.

Held, that a railway company is not liable to the extra costs caused by the amendment of a petition for the payment of dividends on the purchase-money of lands taken.

In this petition by the overseers of the above parish, for the payment of the dividends on the purchase-money for lands the rents of which were payable to the constable for the time being, and which were taken for the purposes of a railway company, and which had been paid into Court, it appeared that an order had been made, but that it had been amended by making the constable a party.

The *Master of the Rolls* held, that the costs of such amendment were not payable by the company.

Vice-Chancellor Kindersley.

Wellesley v. Mornington. June 13, 1854.

LEAVE TO MARRIED WOMAN TO SUE IN FORMA PAUPERIS, WITHOUT NEXT FRIEND.

Leave was given to a married woman, living apart from her husband, to file in forma pauperis a bill in the nature of a supplemental bill to remove trustees, on counsel stating he had settled and signed the bill, where she could not obtain a next friend.

THIS was an application on behalf of the Countess of Mornington, who was living apart from her husband, for leave to file in *forma pauperis* a bill in the nature of a supplemental bill to remove two trustees, one of whom was 90 years of age, and the other an uncertificated bankrupt; and also to restrain the sale of the trust property. There was the usual affidavit that the plaintiff was not worth 5*l.* besides her wearing apparel, &c., and that she could not obtain a next friend, and also that she had a right to sue.

Freeing, in support, stated he had settled and signed the bill.

The *Vice-Chancellor* thereupon made the order as asked.

Vice-Chancellor Stuart.

Dollond and another v. Johnson. June 7, 1854.

CREDITORS' SUIT. — PRIORITY OF CREDITORS IN RESPECT OF JUDGMENTS AGAINST EXECUTOR OF DEBTOR.

Where creditors, the plaintiffs in a creditors' suit, on behalf of all the other creditors, against the executor of a testator, had obtained judgment in respect of assets quando acciderint against such executor after the death of his testator: Held, that they were entitled in priority to another creditor who had afterwards obtained a like judgment against the executor.

In this creditors' suit for the administration of the estate of a Mr. Turner, it appeared that the plaintiffs had recovered a judgment against the defendant, his executor, in respect of assets *quando acciderint*, and that another creditor had afterwards also obtained judgment against the defendant. The question now arose, whether the plaintiffs were entitled in priority to, or only to be paid rateably with, such other creditor.

Wigram, Bird, and Faber for the several parties, citing *Morrice v. Bank of England*, 3 Swanst. 573.

Cur. ad. vult.

The *Vice-Chancellor* said, the right of priority claimed by the plaintiffs was said to accrue as the reward of their greater diligence in obtaining judgment, but a still higher degree of diligence would have been shown if judgment had been obtained against the testator in his lifetime, and then as it was admitted all the judgment creditors would be paid rateably. However, as the cases of *Morrice v. Bank of England*, *ubi supra*, and *Abbis v. Winter*, 3 Swanst. 578, *s.*, recognised this right of priority as to judgments obtained against an executor, and the plaintiffs had also been most diligent in obtaining a decree on behalf of all the creditors for the general administration, their priority must be recognised, and their judgment debt be paid before the other judgment creditors.

Moss v. Harter. June 7, 1854.

VOLUNTARY SETTLEMENT WITH POWER OF APPOINTMENT.—EFFECT OF WILL.

By a voluntary settlement, a sum of money

was settled in trust for such persons, and in such manner as the settlor should by any deed or deeds, instrument or instruments in writing legally executed, direct or appoint, and in default, or in so far as any such appointment should not extend, in trust for the plaintiffs. The settlor afterwards, by will, bequeathed all his personal estates not otherwise effectually disposed of to trustees upon certain trusts: Held, that the will did not operate as an appointment, under the 7 W. 4, and 1 Vict. c. 26, s. 27, and that the plaintiffs were entitled.

By a voluntary settlement, dated in March, 1848, Mr. Winter vested a sum of 1,500*l.* in trustees, in trust for such person or persons in such shares and manner as he should at any time, by any deed or deeds, instrument or instruments in writing, to be by him legally executed, direct or appoint; and in default of such direction or appointment, or in so far as any such direction or appointment (if incomplete) should not extend, in trust for the plaintiffs. It appeared that, by his will dated in August, 1852, he bequeathed, upon the trusts therein mentioned, all his personal estate not otherwise effectually disposed of. The question now arose, whether the will operated as an appointment under the 7 Wm. 4, and 1 Vict. c. 26, s. 27, as a general disposition of the residuary personalty.

Walker and *J. V. Prior* for the plaintiffs; *Bacon* and *Selwyn* for a party in the same interest; *Malins* and *Osborne* for the residuary legatees; *Amphlett* for the executors.

The Vice-Chancellor said, that as the testator had intimated by his will his intention not to touch any part of his personalty otherwise disposed of, he showed his intention not to interfere with the disposition under the deed, and the plaintiffs were therefore entitled.

Fallows v. Lord Dillon. June 7, 1854.

CREDITORS' SUIT. — COSTS. — AFFIDAVIT FILED AFTER MASTER'S REPORT.

In a creditors' suit against the defendant, who had assigned certain real property to trustees for the benefit of his creditors, the plaintiff, a party thereto, who had succeeded in such suit, was held entitled to his costs, although the trustees contended the suit was unnecessary.

An affidavit filed on the plaintiff's behalf since the Master's report on the debts, was received on the ground that it stated circumstances with a view of guiding the judgment of the Court on the question of costs.

Malins and *Brown* appeared for the plaintiff in this creditors' suit on behalf of himself and the other creditors of the defendant, who, it appeared had assigned certain real property to trustees for the benefit of his creditors, and which deed the plaintiff had executed. The Master had reported the amount of debts and the assets in the hands of the trustees and in

Court were sufficient to discharge the same, and the question now arose as to the costs.

Wigram, for the trustees, contra, on the ground the suit was unnecessary; *Jessel* for the defendant.

The Vice-Chancellor said, that as the plaintiff had succeeded, the costs must follow the result in accordance with the ordinary rule, and an objection was also disallowed to an affidavit filed on behalf of the plaintiff since the Master's report, on the ground that it stated circumstances with a view of guiding the judgment of the Court on the question of costs.

Vice-Chancellor Wood.

Gwatkin and others v. Campbell. June 7, 1854.

PLAINTIFFS' RIGHT TO WITHDRAW DEFENDANT'S EVIDENCE AFTER EXAMINATION AS WITNESS.

The plaintiffs examined a defendant in a suit, but withdrew his evidence: Held, that they were entitled to do so, although the defendant was thereby obliged to use it as his own evidence.

In this suit by the trustees of the North Western Bank of India against the manager of their London branch, it appeared that they had examined the defendant as a witness, but proposed on the hearing to withdraw such evidence.

Daniel and *Craig*, for the defendant, took an objection to their right so to withdraw such evidence, as it would throw on the defendant the necessity of using it as his own.

Roll and *Moxon* for the plaintiffs.

The Vice-Chancellor overruled the objection.

Court of Queen's Bench.

Regina v. Russell. June 12, 1854.

INDICTMENT FOR NUISANCE.—NEW TRIAL REFUSED.

A new trial was refused of an indictment for a nuisance by the erection of embankments on the shores of the Menai Straits, whereby the navigation was obstructed, upon the defendant obtaining a general verdict under the direction of the Judge that he could only be convicted if such embankments constituted a material nuisance.

This was a rule nisi granted on April 21 last, for a new trial of this indictment for a nuisance by the erection of three walls or embankments on the shores of the Menai Straits, whereby the navigation was obstructed. On the trial, before *Williams, J.*, at the last Carnarvonshire Assizes, it was admitted by the defendant, who was a fisherman, and had erected the walls for the preservation of certain oyster beds, that it would be better if the embankments were removed, whereupon it was left to the jury to say whether the embankments constituted a material nuisance, upon which the defendant could only be convicted. The jury found a general verdict for the defendant, adding that, although the de-

fendant had created a nuisance, it was not one for which he could be indicted.

Welsby and *M'Intyre* showed cause against the rule, which was supported by *M. Lloyd*.

The Court said, that as this was a penal proceeding, and in which a very grave offence was charged against the prisoner, which would subject him to be punished with fine and imprisonment, a new trial could not be granted, and the rule must be discharged.

Hughes v. Humphries. June 12, 1854.

WEIGHTS AND MEASURES' ACT.—SALE OF WHEAT.—“HOBETT.”

The plaintiff had sold certain wheat to the defendant, described in the arrangement as a “hobett,” which consisted of 168 pounds avoirdupois: Held, that the contract was not illegal under the 5 & 6 Wm. 4, c. 63, and that the plaintiff was entitled to recover in an action for their value.

THIS was an action brought to recover the value of certain wheat, which the plaintiff had sold to the defendant. It appeared on the trial before *Williams, J.*, at the last Flintshire Assizes, that the sale was by measure (a “hobett”), and the defendant accordingly pleaded the illegality of the contract, under the *Weights and Measures' Act, 5 & 6 W. 4, c. 63, s. 11*, as being by measure and not by imperial measure, and he obtained a verdict, subject to leave reserved.

Welsby and *Milward* showed cause against the rule which had therefore been obtained; *J. Brown* and *Coxon* in support.

The Court said, that the sale was a sale by weight of 168 pounds avoirdupois, of which a hobett consisted, and was no infringement of the Statute. The rule would be made absolute.

Bott v. Stancliffe and another. June 12, 1854.

ACTION BY ENGINEER AGAINST OVERSEERS OF PARISH.—SURVEYS ON APPEAL FROM RATE.

An engineer was employed by the overseers of a parish to make certain surveys upon an appeal against a rate imposed on a railway company, but which appeal was referred to arbitration and the award was not made therein until after the defendants had gone out of office: Held, that they were, nevertheless, liable in an action brought by the engineer to recover for his services.

THIS was a rule nisi for a new trial of this action, which was brought by the plaintiff, an engineer, against the overseers of the township of *Kirkeaton*, in *Yorkshire*, to recover for certain services rendered by him in taking surveys upon an appeal against the rate imposed on the *Lancashire and Yorkshire Railway Company*. It appeared that the appeal had been referred to arbitration, and that the award was not made until a few days after the defendants had gone out of office at *Lady-day, 1852*. On the trial the plaintiff obtained a verdict.

Covling showed cause; *H. Hill* in support. The Court said that the defendants were liable, and discharged the rule accordingly.

Court of Exchequer.

Rodriguez v. Melhuish and another. June 3, 1854.

VESSEL.—LIABILITY OF OWNER FOR ACCIDENT, ALTHOUGH PILOT ON BOARD.

The owner of a vessel which was to sail on the 4th from the river Mersey, had moved her out of dock on the 2nd, and had taken on board a pilot, although under the Liverpool Pilot Act the obligation to take on board a pilot only applied to vessels outward bound: Held, that, under these circumstances, the owner was not exonerated from liability in respect of an accident arising from the mismanagement of the vessel.

THIS was an action against the owner and the pilot of a ship, for negligently managing the same in the river *Mersey*, while in their joint possession and control, whereby the plaintiff's craft for raising anchors lost in the river, was sunk. It appeared that the owner of the vessel had taken on board a pilot, and that upon one of the anchors being lost, the plaintiff was engaged to raise it with his boat, but that while so engaged the ship sheered against it and caused the anchor to slip, whereby the boat was sunk. On the trial before *Platt, B.*, at the last *Liverpool Assizes*, the jury found that the accident was caused by the mismanagement of the vessel, and found a verdict for the plaintiff generally. The question now raised was, whether the owner or the pilot alone was responsible, or whether jointly. Rules nisi had been obtained on *April 24 last*, for a new trial by both the defendants.

Edwin James and *Brett* showed cause, on the ground that the pilot was on board as servant of the owner, the *Liverpool Pilot Act* only imposing the obligation on vessels outward bound.

Knowles and *Milward* in support.

The Court said, the questions were, whether the owner at the time of the accident was bound to have a pilot on board, and if so, whether the accident was the exclusive fault of the pilot. It appeared that the sailing day of the vessel was the 4th, and although she moved out of dock on the 2nd, she was not ready for sea, and might have refused to take a pilot on board. It would therefore be unnecessary to consider whether the pilot was exclusively to blame, and the rule obtained by the owner must be discharged.

Nicholl v. Grotz. June 6, 1854.

SALE UNDER WRITTEN CONTRACT DESCRIBING ARTICLE SOLD.—EVIDENCE.

It appeared that the plaintiff had contracted in writing to sell to defendant a quantity of foreign refined rape oil warranted to correspond with the sample. The defendant refused to accept the oil tendered, although it corresponded with the sample, as it did not correspond with the description in the contract: Held, that evidence could not be admitted of a custom in respect of description, and that the defendant knew what

he was purchasing, whereby the terms of the contract would be varied.

THIS was a motion for a rule nisi for the new trial of this action, which was brought to recover damages by reason of the defendant not accepting a quantity of rape oil pursuant to a contract in writing for the sale of foreign refined rape oil warranted to correspond with the sample. On the trial before *Parke, B.*, it appeared that the oil tendered corresponded with the sample, but did not correspond with the description of foreign refined rape oil, as there was an admixture of hemp oil. The jury, under the direction of the Judge that the plaintiff could not recover if the oil did not correspond with the description, found for the defendant, but that there was a custom of the trade in reference to such description, and that the defendant knew he was not purchasing refined rape oil.

Watson in support.

The Court said, that the parties were bound by the written contract, and that the evidence as to the defendant's knowledge and of the custom could not be admitted to vary the terms, and the rule would therefore be refused.

Banks v. Ollerton. May 1, 3; June 7, 1854.

FINES' AND RECOVERIES' ACT.—VALIDITY OF ACKNOWLEDGMENT OF MARRIED WOMAN TO DEED.

A deed creating a charge in favour of an attorney was acknowledged by a married woman, under the 3 & 4 Wm. 4, c. 74, before such attorney and his partner, and the certificate and affidavit of verification by such partner was duly filed in the Common Pleas: Held, that whether such acknowledgment was sufficient or not, it could not be questioned until either the certificate had been quashed or its removal obtained from the file of the Court of Common Pleas.

THIS was a special case for the opinion of the Court, from which it appeared that the testator by his will gave, subject to the life estate of his wife, two houses to his daughter and three houses to the plaintiff, the daughter of another daughter, Anne, and directed that if either died without issue, the whole was to go to the survivor, with a gift over as therein-mentioned, on the death of both without issue. It appeared that the daughter had married the defendant, and upon the death of the testator's widow they conveyed the whole estate, subject to the life estate of the plaintiff, to a trustee for uses, with a term of 1,000 years to secure a sum of 80*l.* to Mr. John Lord, and after satisfaction thereof, to the use of themselves and the survivor of them. The defendant's wife acknowledged the deed, under the 3 & 4 Wm. 4, c. 74, before Mr. Lord and his partner, Mr. Woodcock, and the certificate and affidavit of verification by Mr. Woodcock was duly filed. The defendant's wife died before the plaintiff, who thereupon brought this action to recover possession of one of the houses. The questions now raised were, whether the plaintiff was entitled

under the will, notwithstanding the deed by the defendant and his wife, and also whether the acknowledgment was sufficient and its validity could be disputed until the certificate had been taken off the file of the Court of Common Pleas?

Knowles for the plaintiff; *Lee* and *Atherton* for the defendant.

Cw. ad. vult.

The Court said, that although the rule of the Court of Common Pleas, which allowed one of the Commissioners to be a party interested, might prove to be bad as not warranted by the Statute, it was unnecessary to decide that question, as the sufficiency of the proceedings could not be questioned so long as they remained in the proper form on the records of that Court. It was requisite for that purpose to quash the certificate or to obtain its removal from the file, and the defendant was therefore entitled to judgment.

Lake v. Plaxton. April 28; June 13, 1854.

INCLOSURE OF PORTION OF MANOR, PART OF ROYAL FOREST.—RIGHT OF COMMONERS.

On the trial of an action by the agent of the lord of the manor of Wanstead, which was part of the Royal Forest of Waltham, to try the question whether the defendant, a commoner, was justified in breaking down certain fences on a portion which had been inclosed, the jury were directed in determining the question, whether there was sufficient common left after such inclosure, to leave out of consideration the power of the Crown to keep deer without stint in the forest, and a book of attachments kept by a former steward of the manor was rejected in evidence: Held, discharging a rule for a new trial, that the book was properly rejected, and that there was no misdirection.

THIS action was brought by the plaintiff, as agent of the lord of the manor of Wanstead, to try the question whether the defendant, a commoner, was justified in breaking down certain fences on a portion which had been inclosed. It appeared on the trial before *Cresswell, J.*, at the last Chelmsford Assizes, that the manor was part of the Royal Forest of Waltham, in which the Crown had power of keeping deer without stint, and the jury was directed in determining whether there was sufficient common left after the inclosure in question, to leave out of consideration this power. A book of attachments kept by a former steward of the manor, was also rejected as evidence on behalf of the defendant. This rule had been obtained for a new trial, on the ground of misdirection and rejection of evidence.

Sir F. Thesiger and *Bovill* showed cause; *E. James, Bramwell* and *Rodwell* in support.

The Court said, that the book had been properly rejected, and on the other point (after taking time to consider) also discharged the rule.

The Legal Observer,

AND

SOLICITORS' JOURNAL

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SATURDAY, JUNE 24, 1854.  
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REMUNERATION OF SOLICITORS.

PROPOSED PER-CENTAGE.

EVERY one who has at all considered the subject is well aware that the main difficulty in dealing with the remuneration of solicitors is caused by their bills being subject to taxation, and the necessity which it involves of regulating their charges by fixed and arbitrary rules, which often operate most unjustly to the Profession, instead of leaving the value of their services to be regulated by the ordinary principles regulating all other professions. Hence an impression has arisen that their charges must be dealt with on different rules from those of other professional men, and too great a disposition exists to regard abstract principles and the mathematical precision of the scale, rather than the marketable value, if we may so express it, of the services rendered.

Thus, one of the objections which we have heard strongly urged against the percentage system is, that it does not adapt the remuneration to the work done, but makes up by an overpayment in some cases for the inadequate remuneration which it affords in others. We confess we do not ourselves see anything very objectionable in this principle. No system was ever yet devised by which a professional man's charges were apportioned strictly according to the work done, and although the present system is founded in theory on this principle, practically it is not so,—as the solicitor is as much overpaid for drafts which are lengthy and which contain little else than common forms, as he is inadequately remunerated for drafts which are of necessity shorter, but which involve a much greater amount of skill and labour in their

preparation. But, as the power of taxation is one which we believe the Legislature will not be disposed to part with, we deem it far wiser to endeavour to mitigate some of the evils arising from it, rather than waste our exertions in endeavouring to get rid of it.

There is one hardship which the Profession are exposed to under the present system which ought not to exist. If the Legislature assume to regulate their charges, the scale ought at least to be varied when a different state of circumstances arises; but this has not been the case hitherto. All the reforms which have been made during the last 20 years have been made at the expense of the Profession,—and as instances of this we may refer to the Acts for abolishing the lease for a year and assignment of terms, which being simple and involving little trouble in their preparation, were sources of considerable emolument to the Profession, but which have been abolished without any alteration whatever being made in the existing scale of charges.

Our principal object in calling the attention of the Profession to the *per-centage* system is to render them, to a greater extent than they are, independent of the changes in the Law, and also to effect what has always been felt to be most important,—viz., the shortening of deeds; but this can never be arrived at unless the solicitor is allowed, in some shape or other, the same amount of remuneration for a short deed as he now receives for a long one.

If the per-centage system were adopted, it would, of course, be the interest of the solicitor to draw his deeds as short as possible; but as the system would not be applicable to every class of deed, and the subject is a large one and requires mature consideration, we would suggest that the plan proposed by us of allowing a higher

rate of charge on the shorter deeds—in fact holding out a premium for shortness—should be first taken into consideration.

We have slightly revised our former scale, and we propose to do away with the charges which are now made for attending the solicitor on the other side with draft; attending him returning same; attending to get duty impressed; and attending making appointment to execute; which, we believe, tend to create erroneous impressions as to the nature of a solicitor's services, and ought not to be made.

The scale stated below will show the charges which we propose to substitute in lieu of the present charges, and the gain and loss to the Profession by comparison with the present rate of charging, and we believe, on the whole, that the Profession would slightly gain by the alteration; but it must be remembered that although they may gain slightly in the charges for the preparation of the deed, their profits will be diminished hereafter when they are called upon to furnish abstracts or copies of such deed, and that the Public will be more than compensated in the benefits they will derive from the shortening of deeds.

Proposed new Rate of Charges, viz. :—

	£	s.	d.
Drawing any deed not exceeding one skin of 15 folios	2	5	0
Second ditto	1	10	0
Copying any deed not exceeding two skins, for each skin of 15 folios	0	5	0
Engrossing each skin of 15 folios	0	15	0
Second ditto	0	7	6
For drawing, copying, and engrossing any deed exceeding two skins of 15 folios, for each skin	1	0	0

RESULT.

<i>Present Rate.</i>				<i>Proposed Rate.</i>			
30 folios.				30 folios.			
£	s.	d.		£	s.	d.	
Drawing . . .	1	10	0	Drawing . . .	3	15	0
Copying and engrossing . . .	1	10	0	Copying . . .	0	10	0
Instructions and attendances . . .	2	0	0	Engrossing . . .	1	2	6
				Instructions and attesting execution . . .	0	13	4
<hr/>				<hr/>			
£5 0 0				£6 0 10			
<i>Present Rate.</i>				<i>Proposed Rate.</i>			
£	s.	d.		£	s.	d.	
45 folios . . .	6	10	0	45 folios . . .	7	10	0
60 ditto . . .	8	0	0	60 ditto . . .	8	0	0
75 ditto . . .	9	10	0	75 ditto . . .	9	0	0
90 ditto . . .	11	0	0	90 ditto . . .	10	0	0
105 ditto . . .	12	10	0	105 ditto . . .	11	0	0

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

INCOME TAX (No. 2).

17 VICT. c. 24.

Increased rate of income tax to be charged from 5th April, 1854, in lieu of existing rates; s. 1.

Duty to be assessed and raised under the provisions of recited Acts; s. 2.

Interest on exchequer bills how to be charged; s. 3.

All relief, abatement, and deduction to be proportionate to the increased rate of duty granted by this Act; s. 4.

Copies of poor-rates in Ireland to be transmitted to the Commissioners of Inland Revenue only when required by them; s. 5.

Commencement and continuance of this Act; s. 6.

Act to continue in force for recovery of arrears of duty, &c.; s. 7.

The following are the Title and Sections of the Act :—

An Act for granting to her Majesty an increased Rate of Duty on Profits arising from Property, Professions, Trades and Offices.
[16th June, 1854.]

We your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the supplies to defray the expenses of the just and necessary war in which your Majesty is engaged, have freely and voluntarily resolved to give and grant unto your Majesty the rate and duty hereinafter mentioned; and do therefore most humbly beseech your Majesty that it may be enacted, as follows:

1. From and after the 5th day of April, 1854, there shall be charged, raised, levied, collected, and paid yearly, unto and for the use of her Majesty, her heirs and successors, in lieu of the rates and duties chargeable under the Act passed in the last Session of Parliament, cap. 34, and of the rates and duties granted by an Act passed in the present Session of Parliament, cap. 10, for and in respect of all property, profits, and gains chargeable under the said first-mentioned Act, the increased rate and duty of 1s. 2d. for every 20s. of the annual value or amount of all such property, profits, and gains respectively.

2. The said duty hereby granted shall be assessed, raised, levied, and collected under the regulations and provisions of the said Act passed in the last Session of Parliament, and of the several Acts therein-mentioned or referred to, and all powers, authorities, rules, regulations, directions, penalties, clauses, matters, and things contained in or enacted by the said several Acts, and in force with respect to the duties granted by the said first-mentioned Act,

shall (so far as the same are or may be applicable consistently with the express provisions of this Act) respectively be duly observed, applied, and put in execution for assessing, raising, levying, collecting, receiving, accounting for, and securing the said duty hereby granted, and otherwise relating thereto, as if the same were particularly repeated and re-enacted, *mutatis mutandis*, in the body of this Act, with reference to the said rate and duty hereby granted.

3. Provided always, that the interest on exchequer bills which will become due and payable on the 12th day of June, 1854, for the preceding year shall be chargeable with the rate or duty of 7*d.* only for every 20*s.* thereof, computed up to and including the 5th day of April, 1854, and with the rate of 1*s.* 2*d.* for every 20*s.* thereof computed from the last-mentioned day up to the 12th day of June, 1854: Provided always, that the interest on exchequer bills which shall become due and payable in June next after the termination of this Act and of the said Act of last Session of Parliament respectively, or of the duties granted by the said Acts respectively, shall be chargeable and shall be assessed up to the day of payment in June, in manner following; that is to say, on the interest computed up to the 5th day of April next immediately preceding with the rate of duty which shall be in force and chargeable under the said Acts respectively on the 5th day of April, and on the interest computed from the said last-mentioned day up to the said day of payment in June with the rate of duty which shall be in force and chargeable as aforesaid from and after the 5th day of April; provided, that if the duties by this and the said other Act respectively granted shall finally cease and determine on the said 5th day of April, then the said interest for the whole year up to the said day of payment in June shall be chargeable with the rate of duty in force on the said 5th day of April immediately preceding.

4. Provided always, that in any case where, under or by virtue of the said Act of the last Session of Parliament, or any Act or Acts therein recited or mentioned, any less rate or duty than the rate of 7*d.* for every 20*s.* of the annual value or amount of any property, profits, or gains would, if this Act and the said other Act of the present Session had not been passed, have been chargeable in the present year, or where any relief or abatement or deduction is by any such Act or Acts as aforesaid directed to be given, made, or allowed at or after any rate in such Act or Acts specified or mentioned, then and in every such case the rate of duty, or of such relief, abatement, or deduction, to be charged, given, made and allowed respectively under this Act, shall be in the same proportion to the rate or duty of 1*s.* 2*d.* for every 20*s.* granted by this Act as the rate of duty, relief, abatement, and deduction respectively which in this present year would have been chargeable, or given, made, or allowed in the like cases respectively under the said Act of the last Session, bears to the rate or duty of 7*d.*

for every 20*s.* granted by the said last-mentioned Act.

5. And whereas by the said Act of the last Session of Parliament the clerk of the Board of Guardians of every Poor Law Union in Ireland and the collector of general rates in the City of Dublin are respectively required, under a certain penalty for any neglect, to transmit to the Commissioners of Inland Revenue yearly within the period in the said Act mentioned true copies of the last rates made for the relief of the poor, and it is found by experience that the yearly transmission of such copies is for the most part unnecessary: Be it enacted, that copies of the said rates shall be transmitted at such times only as they shall be required by the said Commissioners, and the penalty imposed by the said Act for any neglect to transmit such copies shall attach and be incurred only for any neglect to transmit the same in pursuance of any requisition of the said Commissioners.

6. This Act shall commence and take effect from and after the 5th day of April, 1854, and, together with the duty therein contained, shall continue in force during the present war, and until the 6th day of April next after the ratification of a definite treaty of peace, and no longer: Provided always, that if the ratification of such treaty shall take place at any time before the 6th day of April, 1859, then on and from and after the 6th day of April next after the ratification of such treaty the said increased rate and duty by this Act granted shall cease, and in lieu thereof the several rates and duties granted by the said Act of the last Session of Parliament shall revive and be payable during so much of the respective terms limited by the said last-mentioned Act as shall be then unexpired, as if this Act had not been passed.

7. Provided always, that this Act, and the said rate and duty hereby granted, shall not cease at the time hereinbefore appointed in that behalf with respect to any assessment which ought before then to have been made, but which shall not have been made and completed, nor with respect to any duty which shall have been assessed and shall then remain unpaid, nor with respect to any penalty before then incurred, nor with respect to any deduction of the said duty or any portion thereof authorised by law to be made out of any rent, interest, or other annual payment, nor with respect to any penalty for refusing to allow any such deduction, although such refusal may be after the time appointed as aforesaid, nor with respect to the assessment of the interest on exchequer bills becoming due in the month of June next after the time appointed for the ceasing of the said duty; but all the powers and provisions of this Act, and of the several Acts herein mentioned or referred to, shall continue in force for making and completing all such assessments as aforesaid, and for levying and recovering the duties so assessed or to be assessed, and all arrears of such duties, and also for re-assessing the same in default of payment, and for making and allowing such de-

duction as aforesaid, and for the suing for, adjudging, and recovering any penalty which shall have been or may be incurred.

FRAUDS' PREVENTION BILL.

BILLS AND NOTES.

THE preamble to this bill recites, that it is expedient to amend and extend the provisions of the 7 & 8 Geo. 4, c. 29, relating to bills of exchange and promissory notes, and then proposes to enact as follows :

The words "bill" and "note" in the 7 & 8 Geo. 4, c. 29, s. 5, shall be taken to include "any paper having any signature written thereon, and purporting or intended to be, or capable of being written upon, so as to be or to purport to be a bill of exchange or promissory note, drawn, made, accepted, or indorsed by the person appearing to have signed such paper;" (s. 1).

If any person by false pretence, menace, or force, or other fraudulent means, shall obtain any bill or note or signature either as drawer, acceptor, or indorser thereto, or to any paper capable of being converted into a bill or note, whether such bill, note, or paper be his own or not, with intent to appropriate or convert to his own use or otherwise fraudulently dispose of the same or the proceeds thereof, such offender shall be guilty of felony, and be liable to penal servitude not exceeding six years, or to imprisonment with hard labour not exceeding three and not less than one year; (s. 2).

Every person becoming the holder of such bill, note, or paper *knowingly and wilfully*, shall be guilty of felony and be liable to a like punishment; (s. 3).

If any person intrusted with a bill, note, or paper, for the purpose of the same being discounted, or of a credit, advance, or loan of money, or for any special purpose or with any special directions whatsoever, whether in writing or not, shall fraudulently appropriate or otherwise dispose of the same, or the proceeds, such offender shall be guilty of a misdemeanor, and be liable to imprisonment with hard labour not exceeding three years; (s. 4).

Every person, *knowingly and wilfully* becoming the holder of such misappropriated bill or paper, shall be guilty of a misdemeanor, and be liable to a similar punishment; (s. 5).

The defendant in any action on a bill or note may, at any time before trial, apply to a Judge at Chambers, on affidavit that the same was obtained by any false pretences, or menaces, or force, or other fraudulent means, or has been fraudulently appropriated; and thereupon the Judge may order the same to be forthwith deposited with an officer of the Court to abide the event of the trial, and may further order the stay of proceedings until satisfactory security for costs be given by the plaintiff; (s. 6).

JUDGMENTS EXECUTION, &c., BILL.

AS AMENDED BY THE SELECT COMMITTEE.

THE following clauses have been added by the Select Committee to this Bill, whose title it is proposed to alter to "A Bill to enforce in any part of the United Kingdom Decrees and Orders of the High Court of Chancery of England and Ireland, and of the Commissioners for Sale of Encumbered Estates in Ireland, and Decrees of the Court of Session in Scotland, and to allow Execution to issue in any part of the United Kingdom, under Judgments or Decrees obtained in Courts of Record in England, Scotland, or Ireland:"—

41 Geo. 3, c. 90, ss. 5, 6 and 12 & 13 Vict. c. 77, s. 14, are repealed; and decrees and orders of the Court of Chancery in England, for the payment of any money, may be registered and enforced in Ireland, and *vice versa*, and decrees or orders of the Encumbered Estates' Commissioners in Ireland may be registered and enforced in England.

Decrees for the payment of money of the Court of Session, or of any Sheriff Court or Burgh Court in Scotland, may be registered in the Courts of Chancery, and enforced in England or Ireland, with a proviso for the stay of such enforcement on the production of a certificate of the passing of a note of suspension, or the granting of a writ of execution.

The Judges to make rules for the execution of this Act, to be laid before Parliament.

The Judges at Westminster and Dublin to issue altered forms of writs of execution if necessary.

A fee of 2s. 6d. to be charged for granting a memorial of any judgment or office copy of any decree or order, or extract of any decree; and a like fee for registering the same; and any person may search the registry on payment of 1s.

THE NEW STAMPS' BILL.

AD VALOREM ON CONVEYANCES. — CHIEF RENTS.

A CORRESPONDENT at Manchester has called our attention to the 14th clause of this Bill, by which deeds made for several valuable considerations are to be chargeable in respect of each,—that is, where a conveyance is partly in consideration of an annual sum and partly in consideration of a sum of money or stock, the deed is to be chargeable with the *ad valorem* duty in respect of each consideration. Our correspondent apprehends that this may give the authorities at Somerset House a power of requiring a larger duty than at present, on conveyances effected according to the practice prevailing at Manchester, where the consideration consists of a chief rent. We have not heard that the Manchester Law Association,

usually most attentive to proposed alterations in the Law affecting their district, has interfered; and we presume, therefore, that the apprehension of our correspondent cannot be well founded.

WARWICK ASSIZE BILL.

THIS Bill proposes to repeal the 5 & 6 Vict. c. 110, ss. 7, 9, which provided, that "the inhabitants of the City of Coventry should not be liable to be summoned or to serve on any inquest or jury for the County of Warwick elsewhere than within the County of Coventry, and that the Judges of Assize and Nisi Prius, and others named in her Majesty's Commissions of oyer and terminer and gaol delivery, should hold their sittings at Nisi Prius, oyer and terminer, and gaol delivery, within the said City of Coventry for the said City, and for such other parts of the said County of Warwick as her Majesty, with the advice of her Privy Council, from time to time should order, and at Warwick for so much of the rest of the said county as should not be included in any such order, and that the sheriff of the County of Warwick should give his attendance upon the said Judges and Commissioners, and should cause to be summoned to Warwick and Coventry such grand and petty jurors of the County of Warwick as should be needed for the execution of the said several Commissions;" and to enact that the Assizes for the whole County of Warwick, including the said City of Coventry, shall be holden at Warwick, and the inhabitants of the said City of Coventry shall be liable to be summoned and serve upon all inquests and juries at the said Assizes, in like manner as the other inhabitants of the said county.

NOTICES OF NEW BOOKS.

A Treatise on the Contract of Partnership, by Pothier: with the Civil Code and Code of Commerce relating to that subject, in the same order. Translated from the French, with Notes referring to the Decisions of the English Courts. By OWEN DAVIES TUDOR, of the Middle Temple, Esq., Barrister-at-Law. London: Butterworths. Pp. 144.

THE recent discussions on the Law of Partnership, and particularly the subject of "limited liability," have excited so much public attention, that the present work must be deemed peculiarly appropriate. Mr. Tudor observes, that the Treatise of Pothier has often been cited in our Courts and referred to by our text-writers, and the principal object of the translator, by adding to the notes the French Civil and Commercial Code upon this subject, has been to show

in what mode those codes were framed and to what extent their framers were indebted to Pothier,—“Honour to whom honour is due.”

The volume treats 1st. Of the nature of the contract of partnership. 2nd. Of the different kinds of partnerships. 3rd. Of the different clauses in partnership contracts. 4th. Of the forms which the law requires in the contract. 5th. Of the rights of each of the partners to the partnership property. 6th. How each of the partners is bound by the debts of the partnership. 7th. Of the obligations which arise from the contract. 8th. Of the dissolution of a partnership. 9th. Of the distribution of the partnership effects.

There are so many able works on the Law of Partnership in this country, that it would be beside our duty to enter upon a general review of this branch of jurisprudence; and we shall therefore confine our attention to the immediate topic before the public:—the limited liability of partners.

In treating of the Debts of Partnerships *en commandite* and *anonymous* Partnerships, we find the following notes from the Commercial Code of France:—

“In a partnership *en commandite*, when there are several partners jointly and severally responsible by name, whether all manage together, or one or more manage for all, the partnership is at the same time a partnership *en nom collectif* with respect to them, and a partnership *en commandite* with respect to those who are merely holders of funds or shareholders. Comm. Cod. of France, 24.

“The name of a partner *en commandite* cannot form part of the style of the firm. Ib. 25.

“The partner *en commandite* is only liable for losses to the amount of the funds which he has contributed, or ought to contribute, to the partnership. Ib. 26.

“The partner *en commandite* can do no act of management, nor be employed in the business of the partnership, even under a power of attorney. Ib. 27.

“In case of contravention of the prohibition mentioned in the preceding article, the partner *en commandite* is responsible, jointly and severally, with the partners *en nom collectif*, for all the debts and liabilities of the partnership. Ib. 28.

“An *anonymous* partnership is indicated by the designation of the object of its enterprise. Ib. 30.

“It is managed by temporary directors, who are revocable, and are either partners or not partners, with or without salaries. Ib. 31.

“The directors are only liable for the execution of the powers confided to them. They do not contract by reason of their management any personal or joint and several obligation

with relation to the engagements of the partnership. Ib. 32.

"The partners are only liable for losses to the amount of their interest in the partnership. Ib. 33."

To these extracts we may add the following valuable remarks:—

"With regard to partnerships *en commandite* it will be observed that the partners whose names appear to the world are, like partners *en nom collectif*, jointly and severally liable for all the debts, while the partners *en commandite* whose names do not appear, if they comply with the provisions of the code, as to registration and non-interference with the management of the affairs of the partnership, will only be liable to the extent of their capital. This species of partnership does not exist in England, because it is here a maxim of the law that all persons entitled to a share in the profits of a partnership, even dormant or concealed partners, are, as regards third parties, notwithstanding any stipulations among themselves, liable in *solido* for all the debts of the partnership. (See *Blandell v. Winsor*, 8 Sim. 601; *Walburn v. Ingilby*, 1 My. & K. 61, 76; Stor. Partn. 254). So likewise if a person advance money to a firm at a rate of interest varying with the profits of the concern, he will be liable as a partner. Partnerships of this kind exist in all parts of the Continent of Europe, and have been adopted in many of the States of North America; and it appears to be the opinion of mercantile men, and of lawyers in those countries, that they have greatly contributed to commercial prosperity, and towards bringing capital, which would otherwise have remained dormant, into active and useful circulation.

"The introduction of partnerships *en commandite* into this country has been recommended by many persons whose opinions are entitled to great consideration; and as it is believed that here as well as elsewhere they would promote the prosperity of small capitalists, and especially of the working classes, it is to be hoped that the commission now sitting for the purpose of taking into consideration the mercantile laws of England, Scotland, and Ireland, with a view to their assimilation, will not pass over without notice a subject of such deep importance. The principle of limited liability, as in partnerships *en commandite*, has been long since recognised and adopted in this country, where Acts of Parliament or Charters have constituted companies for *public* undertakings, such as for railways, gas, or waterworks, docks, &c. The Irish Anonymous Partnership Act (21 & 22 Geo. 3, c. 46), passed so far back as the year 1781-2, adopts the principle of limited liability, but as it interferes too much with what ought to be left to the discretion of the parties, its success has not been very encouraging.

"One of the objections which might formerly have been raised to partnerships *en commandite* was, that they were merely the means

of obtaining a rate of interest varying with the profits of the concern, and were therefore within the mischief of usury; but as the laws against usury (except where land forms part of the security) have been repealed, this objection can now have no weight.

"Another objection is, that these kinds of partnership would lead to undue speculation. To this we may answer that in *private* undertakings the owners of capital are in general the best judges as to whether they would or would not be productive, and that the Legislature which confers the privilege of limited liability upon companies formed for carrying out undertakings of a *public* character, might depend upon individuals exercising ordinary prudence in their own affairs.

"Another objection is, that it is not right that the partner with limited liability should participate in the profits and throw the losses upon innocent parties. There is, however, no weight in this objection, for if a partner *en commandite* contracts with third parties (as he does in all cases), that he will be liable only to the extent of his capital in the concern, those parties who, after full notice, deal with the partnership, have no natural or equitable right to more than what they have contracted for.

"That creditors are better circumstanced when part of the capital to carry on a business is subscribed by partners *en commandite*, than when it is borrowed by a firm, is clear. Thus, if a firm carries on business with a capital of 20,000*l.*, 10,000*l.* of which is borrowed, in the event of ill success the lender, after obtaining perhaps a far higher rate of interest than the average rate of profits, either obtains a preference over the other creditors, or proves as a creditor for what remains unpaid of the 10,000*l.*, whereas a partner *en commandite* would only be entitled to a share of the profits, if there were any, and would be liable to the extent of his 10,000*l.* embarked in the concern to its creditors.

"The principal opponents of partnerships with limited liability will most likely be found amongst the large capitalists, who perhaps naturally fear that a combination of small capitalists, by bringing dormant capital into active competition with their own, would thereby diminish their profits."

On the distinction which exists in our Law between Partnership and Community, or *Part ownership*, we may cite the following note of the learned Editor:—

"In both, indeed, there exists a community of interest; in the former, however, it is the result of a contract between the parties, whereby there is either expressed or implied a community of profit and loss? the latter often either exists independent of any contract whatever, as in the case of joint legatees, or devisees, or coheirs, or at any rate independent of any contract implying a community of profit and loss; as where persons jointly purchase

property, which is not to be sold for their common benefit, but to be allotted to them in distinct shares, such community of interest will not constitute a partnership. *Hoare v. Dawes*, Doug. 371; *Coope v. Eyre*, 1 H. Black. 37; *Gibson v. Lupton*, 9 Bingh., 297. So, likewise, although there is a community of interest between the representatives of a deceased partner and the surviving partners, there is not, independently of contract, any partnership between them. *Pearce v. Chamberlain*, 2 Ves. 33.

"Upon the same principle, where persons engage to do some particular work and receive money for it, not on a joint account or for their joint benefit, but to be divisible between them on receipt; the contracting parties, it seems, will not be partners, but joint contractors. *Finckle v. Stacy*, Sel. Ch. Ca. 9. See the remarks of Wigram, V. C., 7 Hare, 174; 3 Ersk. 3 § 13; Bell's Law of Scotland, 133."

The concise description we have given of the scope of the work, and the quotations we have thus laid before our readers, will show that Mr. Tudor has in this translation, and the notes he has appended, made a valuable contribution to our stores of legal literature.

ADMINISTRATON OF OATHS IN CHANCERY ACT.

CONSTRUCTION OF THE ACT.

LONDON Commissioners to administer Oaths in Chancery are not limited as to the place at which they may administer the oath by the words "at their respective places of business," in the 2nd section of the 16 & 17 Vict. c. 78, those words being only used to indicate the area within which they are to be taken as "practising."

The Clerk of Records and Writs having refused to file an affidavit taken before a London Commissioner, on the ground that it was not sworn at the place of business of the Commissioner (it was, in fact, sworn in the Accountant-General's Office),

Follett moved for an order that the Clerk of Records and Writs should file the affidavit, and referred to a decision of the Lord Chancellor and Sir G. J. Turner, L.J., reported in the *Legal Observer* for the 14th January, 1854. The application was first made to the Master of the Rolls, but his Honour intimated a wish that the point should be brought before the Lord Chancellor. The point turned upon the construction of the 2nd section of the Oaths in Chancery Act, 16 & 17 Vict. c. 78, which is in these words:—"It shall be lawful for the Lord Chancellor from time to time to appoint any persons practising as solicitors within 10 miles from Lincoln's Inn Hall, at their respective

places of business, to administer oaths and take declarations, affirmations, and attestations of honour in Chancery, and to possess all such other powers and discharge all such other duties as aforesaid; and such persons shall be styled 'London Commissioners to administer Oaths in Chancery;' and they shall be entitled to charge and take a fee of 1s. 6d. for every oath administered by them, and for every declaration, affirmation, or attestation of honour taken by them, subject to any order of the Lord Chancellor varying or annulling the same."

J. H. Taylor, for the Suitors' Fee Fund, contended, that if the words "at their respective places of business" were not construed to denote the place at which the oath was to be administered, those words would be mere surplusage, as it must of necessity follow that a solicitor must practise at his place of business; and further, that if the contention of the other side be right, then there would be no limit as to the distance from London at which a London Commissioner might administer an oath; whereas it was the object and intention of the Act of Parliament that there should be a distinction between the London and Country Commissioners. He was proceeding to show this from what took place in Parliament upon the discussion of the Bill, but was stopped by the Lord Chancellor. He stated that the case in the *Legal Observer* was an *exparte* application.

Lord Chancellor.—Although the order there was made *exparte*, yet it was not made without due consideration. I am of opinion that the words "at their respective places of business" must be referred to "persons practising as solicitors," whose respective places of business for practice are within 10 miles of Lincoln's Inn Hall. If this was not the construction, then one object of the Legislature would frequently be defeated, for if a party was sick and unable to attend at the Commissioner's office, he could not be sworn. Another objection would be, that if the oath could only be administered by a solicitor at his place of business, it could only be administered to parties other than his own clients, so that A.'s clients would have to come to B.'s office, and B.'s clients to A.'s office. I do not think that it could have been the meaning of the Legislature that the Commissioner could only administer the oath at his own place of business. I think probably that the meaning of introducing the words "place of business;" was only to indicate the area within which the solicitors were to be considered as "practising." I therefore think that this affidavit ought to be filed.

J. H. Taylor said, that the inconvenience was found to be very great at the affidavit office, in consequence of many of the London Commissioners making appointments to swear the affidavits there.

The *Lord Chancellor* said, that if parties came into the offices who had no business there, they must be turned out, but that inconveniences must be met as they arise. *In re the*

Clerks of Records and Writs, June 3. [From *The Jurist*.]

The accuracy of our report of the former decision of this case was questioned by a correspondent of *The Jurist*, and we consequently gave the shorthand-writer's notes verbatim (see 47 Leg. Obs. p. 256). The recent decision which we reported, *ante*, p. 109, goes even farther as to the power of the Commissioners than the previous decision. Our contemporary, *The Jurist* has given a somewhat fuller report of the last decision, of which we have above availed ourselves.

NEW ORDER IN CHANCERY.

REDUCTION OF FOLIO FROM 90 TO 72 WORDS.

THE Right Honourable Robert Monsey Lord Cranworth, Lord High Chancellor of Great Britain, doth hereby, in pursuance of an Act of Parliament passed in the 15th & 16th years of the reign of her present Majesty, intituled "An Act for the relief of the Suitors of the High Court of Chancery," and in pursuance and execution of all powers enabling him in that behalf, order and direct as follows, that is to say :

1. That from and after the 2nd day of July, 1854, all office copies and other copies of pleadings, proceedings, and documents in the Court of Chancery shall (except in the cases hereinafter mentioned) be counted and charged for after the rate of 72 words per folio; and where such copies, or any portion thereof, shall comprise columns containing figures, each figure shall be counted and charged for as one word.

2. From and after the 2nd day of July, 1854, the charge for all transcripts of accounts made in the office of the Accountant-General shall be after the rate of 2s. for each opening of such transcript consisting of the debtor and creditor sides of the account to be entered therein.

3. The charges hereinbefore directed to be made shall be paid by means of stamps according to the General Orders of the Court of Chancery in that behalf now in force, so far as relates to documents furnished by the said Court.

June 21, 1854.

CRANWORTH, C.

MANOR OF KENNINGTON.

THE copyholders in this manor consider themselves peculiarly entitled to a favourable consideration, inasmuch as they were in 1852 absolutely deprived, through an Act of the Legislature, of their rights of common and pasturage on Kennington Common, and of any allotments to which they would have been entitled on an inclosure.

It cannot be questioned, looking at the locality, that such allotments would have been of almost incalculable value, and not less as building ground than from 500*l.* to 600*l.* an acre.

The copyholders, however, perceiving the laudable design of Prince Albert to frame a park on the common for the recreation of the public, considerably abstained from all opposition to the Bill introduced into Parliament in 1852, intituled "An Act to empower the Commissioners of her Majesty's Works and Public Buildings to inclose and lay out Kennington Common as Pleasure Grounds for the recreation of the Public." Whereas, on the contrary, on a similar measure being passed in reference to Battersea, those interested claimed and were allowed some 1,500*l.* for their common rights. And yet, by the Kennington Common Act, sect. 4, that common is kindly vested in the Commissioners, "*freed and discharged from all rights of common and all other rights whatsoever.*"

It may be observed, that had Kennington Common been inclosed under the sanction of Commissioners, the portion usually allotted to the lord of a manor being about a sixteenth, so that in truth the copyholders relinquished no less than fifteen-sixteenths of the common for the use of the public to meet the wish of the prince. Surely, then, it would be manifestly unjust to charge them for their enfranchisement based on the rack-rents, and not on the rents reserved by the building leases.

R.

COUNTY COURT JURISDICTION.

DISTANCE OF PARTIES HOW MEASURED?

THE County Court Act says that the Superior Court shall have jurisdiction if the plaintiff lives more than 20 miles from the place of business of the defendant.

A defendant owed a man, who lived at London Bridge, on a note of hand made in London for a balance of 3*l.*, and a few shillings for interest. He claimed 8*l.*, and indorsed his

note to a brother-in-law who lives at Gravesend, who gave it to an attorney in the Temple, who issued a writ in the Superior Court against the defendant for 8*l.* and costs. The defendant took out a summons to stay on payment of 4*l.* odd, the real balance due on the note, including interest, which was immediately assented to, and the costs were taxed at 2*l.* 10*s.*, and the debt and costs, amounting to 7*l.*, immediately paid.

Was the defendant bound to pay costs as in the Superior Court? Gravesend, as the crow flies, is less than 20 miles from where the defendant carries on his business, but by turnpike road, railroad, or by water exceeds 20 miles. B.

COUNTY COURT STATISTICS.

From the Statistics of the County Courts (*ante*, p. 108) it appears :—

That the proportion per cent. of causes tried to plaintiffs entered under 20*l.* is 52—varying from 71 to 31 per cent., and of causes above 20*l.*, is 58. In the Metropolitan districts the proportion is high; while in Wales, Northumberland, Cornwall and other thinly populated parts of the country, in which the distances to be travelled to the Courts are very great, the proportion of causes heard is small.

That the average amount for which plaintiffs were entered, is 2*l.* 18*s.*

That the proportion per cent. of costs to amounts for which judgment has been obtained is 25. This is made up of 17-25ths Court fees, and 8-25ths expenses of counsel, attorneys, and witnesses. In some of the country circuits the costs and fees are much more than 25 per cent. of the amount of the claims adjudicated on. This may be accounted for by the mileage fee payable for the service of the summons and the travelling expenses of witnesses in these districts. The difference between the proportion in one country circuit and another may be caused from the practice which exists in some circuits of allowing a plaintiff, where his evidence is material, his expenses as a witness, and in others not to allow them. In the Metropolitan Courts and in the large towns such as Liverpool, Manchester, and Bristol, the costs are low, as no mileage is payable either for service or witnesses.

That the number of judgment summonses heard per 100 issued, is 51.

That the number of warrants of commitment on every 100 judgment summonses issued, is 26.

That the number of persons actually taken to prison on every 100 judgment summonses issued, is 11. The smallness of that number arises from the prisons being many miles distant from Courts, and the plaintiff having to pay a fee of 1*s.* a mile to convey the defendant to prison. Thus, in the Liverpool Circuit there were only four warrants actually enforced for every 100 commitment summonses, the prison being 52 miles off, while in the Norfolk Cir-

cuit the number is 26—the distance of the prison only averaging nine miles from the Court. In the Yarmouth Circuit there are three prisons for the several parts of the district, distant 1, 20, and 54 miles, and a creditor may therefore have to pay from 1*s.* to 54*s.* for the debtor's conveyance to prison.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

ANNUAL REPORT OF THE COMMITTEE OF MANAGEMENT.

April 29th, 1854.

State of the Association.—During the past year, Mr. John Bulmer, of Leeds, and Mr. Ryland, of Birmingham, have each kindly undertaken the duties of Corresponding Member. The Committee have also had the pleasure of adding to the list of their provincial colleagues, the name of Mr. F. L. Bodenham, of Hereford. They have also made arrangements with the Bristol Law Society, by which the officers of that Society will, during their tenure of office, become Members of this Association.

The Committee must once more press upon the members the importance of extending this organization as widely as possible. And for this purpose, they would again call attention to the resolution passed last year :—

“That in every town where there are five or more subscribers, the members be invited to send to the Committee the names of such of their number as they may desire should be added to the Committee.”

The Committee regret to say that, except* by their friends at Hull and Leeds, this resolution has not been responded to in any one case. In Leeds, a canvass of the town has been undertaken by a local Sub-Committee, and the result has been that thirteen additional members have been added to the Association.

During the last Long Vacation, the Secretary made his usual tour, and visited the towns of Reading, Oxford, Bath, Bristol, Monmouth, Hereford, Newport, Cardiff, Swansea, and Carmarthen. As on former occasions, he found everywhere a general feeling of depression at the actual state and prospects of the Profession, accompanied by the opinion that, however desirable a general union of all its members would be, it is not to be expected that such a union can be effected. This feeling is too often made the excuse of doing nothing, even by those who acknowledge the great need of increased association. However, by visiting the various towns, and, where necessary, calling upon gentlemen in their own offices, the Committee are gradually getting into communication with those who are willing to do something, and are thus enabled to furnish a reply to the question that meets them upon every application,—“What have the Committee done for us?”—a question to which the Committee trust the members will deem that a satisfactory answer is found in the history of

the operations of the Association, contained in the Annual Reports and the periodical Circulars—a history which shows a continued, and not altogether unproductive course of exertion on the part of the Committee. Although it is true, and a truth which the Committee are anxious to impress more and more upon all the members of the Profession, that those exertions would have been very much more productive if the means of action had been more generally contributed by the Profession.

Encroachments.—During the past year, the Committee have had to direct their attention to various cases, in which the proper province of the Profession has been occupied by irregular practitioners. They have received complaints from several of their correspondents, of the extent to which professional business is transacted by accountants, house-agents, and brokers; and they regret to say, that in the majority of these cases, there is no law which will afford them any protection. At the same time,

is perfectly true that, if the Profession were really united, they would be enabled very greatly to diminish the evil, by continually exerting the influence they possess, to keep up the proper boundary between professional and non-professional business, and never lending such encroachments even the apparent sanction of a tacit acquiescence.

One kind of encroachment, which appears to be somewhat on the increase, consists of the attempts made by law stationers in London to attract to themselves a large proportion of the business, usually confided to country attorneys to their town agents. This is a point which is of course entirely within the control of the Profession, and the Committee of this Association, comprising, as they do, a majority of provincial members, feel bound to record their conviction, that such small saving as may be secured in this way to one portion of the Profession, is very much more than counterbalanced by the injury which is done to the whole body, where any encouragement is given to the encroachments of the unprofessional classes who hang upon its borders.

It is important, with this view, that all solicitors should know, that the Attorney and Solicitor's Act only secures to the Profession the privilege of "suing out for another party any writ or process;" and prohibits all other persons from "commencing, prosecuting, or defending any action, or suit, or any proceedings in any Court of Law or Equity," or "from acting as an attorney or solicitor."

The Act is entirely silent upon all the various branches of professional business, except those enumerated above. The only other protection enjoyed by the Profession is that derived from the stamp duty upon conveyancers' certificates. The law upon this point is found in the 14th sect. of the 44th of Geo 3, c. 98, which enacts, "that every person who shall for, or in expectation of, any fee, gain, or reward, directly, or indirectly, draw or prepare any conveyance of, or deed relating to, any real or personal estate, or any proceeding in Law or

Equity, other than and except serjeants-at-law, barristers, solicitors; attorneys, notaries, procurators, agents, or procurators, having obtained regular certificates, and special pleaders, draftsmen in equity, and conveyancers, being members of one of the four Inns of Court, and having taken out certificates, and other than and except persons solely employed to engross any deed, instrument, or other proceedings, not drawn or prepared by themselves, and for their own account respectively, and other than and except public officers drawing or preparing official instruments applicable to their respective offices, and in the course of their duty, shall forfeit and pay for every such offence the sum of 50*l.*, provided always, that nothing herein contained shall extend, or be construed to extend, to prevent any person or persons drawing or preparing any will or other testamentary papers, or any agreement not under seal, or any letter of attorney."

The Committee are not unfrequently requested to give assistance in prosecuting irregular conveyancers, and they have therefore thought it well to point out to the members the provisions under which any such prosecution must be conducted; and it is necessary for them to state, in addition, that the only mode in which it can practically be instituted is by obtaining clear evidence of some particular offence, which must be placed in the hands of the Solicitor to the Board of Inland Revenue, in the shape of affidavits.

Another case of encroachment, being an offence, not against the law of the land, but against the well-understood etiquette of the Profession, was brought, some time ago, under the attention of the Committee, in the shape of an advertisement in the "*Carlisle Patriot*," by a Mr. Solomon Atkinson, a Barrister of the Society of Lincoln's Inn; in which that gentleman commenced by inviting the Public to resort to his chambers for advice in all cases of difficulty, and wound up by proclaiming that he was ready to draw all kinds of conveyances "at one-third the usual charge."

The Committee felt that this was a case that could be best dealt with by the authorities of Lincoln's Inn, to whom accordingly they sent a communication on the subject; and from whom they received a reply, that "the case had for some time engaged the attention of the Benchers, and would be duly considered by them on the part of the Society of Lincoln's Inn."

The Committee believe that the advertisement in question has disappeared, and they have requested their friends at Carlisle to give them immediate notice, should it again make its appearance.

The Committee last year presented a memorial to the Lord Chancellor, calling his attention to the increasing class of irregular practitioners; and praying, his lordship to give directions that no document should be received in any office under his control, except from the party concerned, or through a solicitor's office. In reply, they were favoured with

an intimation that the matter should receive his Lordship's attention; but, up to the present time, they believe that no regulation upon the subject has been made.

Legal Education.—Since the issuing of last year's report, the Committee have had the pleasure of receiving a communication from the Wolverhampton Law Society, approving the suggestions which had been circulated by the Committee, for "improving the educational test of Attorneys and Solicitors." This resolution, which was the ninth to a similar effect received from the Provincial Law Societies, the Committee also communicated to the Council of the Incorporated Law Society. They believe that the Council are still giving the subject their anxious attention, but they regret they have not yet seen their way to the actual adoption of some of the improvements suggested.

Annual Certificate Duty.—When the Chancellor of the Exchequer last year announced his intention of making a partial reduction at once in the Annual Certificate Duty and in the Stamp on Articles of Clerkship, the Committee, anxiously considered what course they ought to adopt in the interests of the Profession with regard to that proposal. They received communications upon the subject from a large number of their correspondents, and the almost unanimous opinion appeared to be, that the Profession should in no way accept the proposal. It was not what had been asked for; it was not that which was considered by those most interested in the case at all to meet the requirements of the Profession; and, while it admitted the injustice of the tax, it left that injustice entirely unaltered in principle. The Committee, therefore, were prepared to renew the agitation this year with undiminished activity. When, however, the commencement of the present Session approached, the altered state of European politics made it clear that no further revision of taxation was at present to be hoped for; and, therefore, after again consulting the whole of their provincial members, they have contented themselves with presenting a petition to the House of Commons, in which they state that the Profession has not accepted, and cannot accept, the Act of last Session as any settlement of the question; that, in the present aspect of public affairs, they refrain from urging their claims upon the attention of the House; but that they are prepared to renew those claims as soon as the exigencies of the public service will admit of any further remission of taxation.

Spoiled Stamps.—It is a frequent subject of complaint in the Profession, that a great deal of unnecessary trouble is imposed upon solicitors before they can obtain the allowance of spoiled stamps. The great increase in the use of stamps for the payment of Court fees appeared to the Committee likely to give rise to a considerable addition to this inconvenience. Spoiled stamps on powers of attorney at the Bank of England are allowed to that body upon a certificate of one of the officers of the

establishment, and the Committee, therefore, have submitted to the Lord Chancellor a suggestion that the amount of any Chancery Fee Fund stamp, upon a document which had not been used, should be allowed, upon the written application of the solicitor, accompanied by a certificate written upon the document itself, declaring that it has been spoiled or become useless, and has been paid for by, and belongs to him. A solicitor making a fraudulent certificate would, of course, be punishable for so doing; but, as an additional protection to the Fee Fund, it might be required that the document should be marked as spoiled, by the officer to whose department the fee belongs.

In reply to this communication, the Committee received a letter from the Lord Chancellor's secretary, stating that it should be attended to.

Aggregate Meeting.—In the Circular issued by the Committee in November last, it was announced that an aggregate meeting of the Profession was intended to be held at Leeds in the month of October next, to which all the Law Societies should be invited to send delegates. The Committee have now the pleasure of announcing that they have received a letter from the Secretary of the Leeds Law Society, stating that the Committee gladly acquiesce in the proposal, and will exert themselves to make the meeting as successful as possible.

The results of the meeting which took place two years ago at Derby, show that very great good may be effected by such gatherings of the scattered members of the Profession; and the Committee earnestly hope that upon this occasion, not only every existing Law Society will send delegates, but that, wherever it is practicable, the members of the Profession residing in a town or neighbourhood, will select one or more of their number to attend the meeting as a representative of the body. The constant activity of the lawyers of Leeds is an ample guarantee that everything will be done there to prepare for a satisfactory meeting; and it only remains for the general body of the Profession to avail themselves of those arrangements. Due notice will, of course, be given as soon as further details have been determined upon.

Circular No. 4.—The Committee are glad to find that the circular which they issued at the commencement of Michaelmas Term, giving a general account of the changes which were effected in the Law during the last Session of Parliament, was considered to be valuable by the members.

The Press.—All the experience of the Committee convinces them more and more that the great want of the Profession is a regular voice in the public press of the country. By means of their reports and circulars, the Committee maintain themselves to a certain extent, in communication with their subscribers, but even those documents would very much more effectually perform their functions, if they formed only a portion of some regularly-established periodical; while, for the equally important

object of informing the mind of the general public of the real views and claims of the Profession, the Committees are at present without any means of action whatever. This subject has been so frequently and so much dwelt upon by the Committee, that they are really unable to add anything to what they have already said; but they think it right to lose no opportunity of declaring their conviction that to obtain a voice in the recognised periodical press of the country, would be of far greater importance than any other object they have ever had in view; and they have no hesitation also in saying that it is an object perfectly within the power of the Profession, and which the Committee could at once ensure, if they were furnished with sufficient funds to enable them to make the necessary business arrangements for the supply of materials. They are also convinced that until a step of this kind has been taken, the work of all law societies will fail to produce its legitimate effect, in raising the general character and status of the Profession in the eyes of the public. And until that is done, its claims to fair and liberal treatment in regard to the general public on the one hand, and the other branches of the Profession on the other, will never receive satisfaction, or even due attention.

County Courts.—It is now nearly two years since Parliament resolved that the County Courts should no longer be distinguished from all the other civil tribunals of the kingdom by throwing upon the suitor who resorts to them for justice, the alternative of risking his cause by dispensing with all professional assistance, or of paying for it himself. Last year the Committee repeated that the scale had been long settled by the County Court Judges, and laid before the Lord Chancellor, by whom it had been, according to the provisions of the Act, referred to the Common Law Judges. Before them, apparently, it still remains, and, for some unexplained reason, the suitors have not yet been allowed to derive any benefit from the Act which was passed in 1852, to remedy an acknowledged and crying evil.

In the meantime, however, on the 20th of August last year a new commission was appointed to inquire into the state of the County Courts, the course of practice, the amount and nature of the fees levied, the costs of proceedings, whether any and what alteration and amendments can be made in the Courts for the better administration of justice, and whether any and what business can be usefully and properly transferred to them in addition to that which they now perform. The Commissioners are Sir John Romilly, M. R., Mr. Justice Erle, Mr. Justice Crompton, Mr. Fitzroy, M. P., Mr. H. S. Keating, Q. C., and Mr. J. R. Mullings, M. P., and Mr. H. Koe, Q. C., Mr. Serjeant Dowling, and Mr. J. Pitt Taylor, three of the County Court Judges. Of these Commissioners four are to be a quorum, and they are to report within a year of their appointment. We presume, therefore, that the result of their labours is not likely to assume a legislative

shape until next Session; and as the costs of proceedings forms one of the subjects into which they are to inquire, it is to be hoped that they will report in favour of a scale not less satisfactory than that already prepared.

If the Committee may judge of all the labours of the Commissioners from that part which has transpired, they certainly seem to be determined to make their inquiry a thorough and complete one. The Committee have received from them two papers of questions, which go through the subjects of the jurisdiction, offices, practice, and fees of the Court, including both their amount, and the mode in which they are levied. The Committee have returned a paper of replies to the first series of questions, and are preparing replies to the second series.

The Committee have availed themselves of this opportunity of restating their conviction, that, in order to make these Courts satisfactory, the suitors ought not to be compelled to entrust to salaried officers of the Court, who are practically irresponsible to them, the performance of any of those duties, such as issuing and serving the various processes of the Court, which in the Superior Courts are performed by the attorneys, who are both selected by, and responsible to, the suitors. They have also pointed out the want in the County Courts of some mode of obtaining judgment by default, as convenient as the Judge's order in the Superior Courts; and they have also insisted on the great injustice alluded to above, of not allowing to the successful party, as the ordinary rule, the full costs of all the proceedings, when taken by his professional adviser.

[To be continued.]

SUMMER CIRCUITS OF THE JUDGES.

(Lord Campbell, C. J., will remain in Town.)

NORFOLK.

Jervis, L. C. J., and Cresswell, J.

Thursday, July 13, Aylesbury.

Saturday, July 15, Bedford.

Tuesday, July 18, Huntingdon.

Thursday, July 20, Cambridge.

Monday, July 24, Norwich and City.

Friday, July 28, Ipswich.

HOME.

Pollock, L. C. B., and Erle, J.

Wednesday, July 12, Hertford.

Monday, July 17, Chelmsford.

Monday, July 24, Maidstone.

Monday, July 31, Lewes.

Thursday, Aug. 3, Guildford.

MIDLAND.

Parke, B., and Maule, J.

Tuesday, July 11, Oakham.

Wednesday, July 12, Northampton & Town.

Monday, July 17, Leicester and Borough.

Wednesday, July 19, Nottingham and Town.

Saturday, July 24, Lincoln and City.
 Wednesday, July 26, Derby.
 Monday, July 31, Coventry.
 Tuesday, Aug. 1, Warwick.

OXFORD.

Alderson, B., and Crompton, J.

Monday, July 10, Abingdon.
 Wednesday, July 12, Oxford and City.
 Saturday, July 15, Worcester and City.
 Wednesday, July 19, Gloucester and City.
 Tuesday, July 25, Monmouth.
 Thursday, July 27, Hereford.
 Saturday, July 29, Shrewsbury.
 Wednesday, Aug. 2, Stafford.

WESTERN.

Coleridge and Wigham, JJ.

Tuesday, July 11, Winchester.
 Saturday, July 15, Dorchester.
 Wednesday, July 19, Exeter and City.
 Wednesday, July 26, Bodmin.
 Monday, July 31, Wells.
 Saturday, Aug. 5, Devizes.
 Wednesday, Aug. 9, Bristol.

NORTHERN.

Platt, B., and Crowder, J.

Wednesday, July 12, York and City.
 Saturday, July 22, Durham.
 Tuesday, July 27, Newcastle and Town.
 Monday, July 31, Carlisle.
 Thursday, Aug. 3, Appleby.
 Saturday, Aug. 5, Lancaster.
 Wednesday, Aug. 9, Liverpool.

SOUTH WALES.

Williams, J.

Tuesday, July 11, Cardigan.
 Friday, July 14, Haverfordwest and Town.
 Tuesday, July 18, Carmarthen.
 Saturday, July 22, Cardiff.
 Saturday, July 29, Brecon.
 Wednesday, Aug. 2, Presteign.
 Saturday, Aug. 5, Chester and City.

NORTH WALES.

Martin, B.

Wednesday, July 19, Newtown.
 Saturday, July 22, Dolgelly.
 Tuesday, July 25, Carnarvon.
 Friday, July 28, Beaumaris.
 Monday, July 31, Ruthin.
 Thursday, Aug. 3, Mold.
 Saturday, Aug. 5, Chester and City.

BARRISTERS CALLED.

Trinity Term, 1854.

LINCOLN'S INN.—June 9.

Jonathan George Norton Darby, Esq., B.A.
 William Wykes Ladell, Esq.

Edward George Augustus Harcourt Moore
 Esq., B.A.

Alfred Bailey, Esq., M.A.
 William Alexander Dobie, Esq., B.A.
 Andrew Charles Elliott, Esq.
 Edward Fry, Esq., B.A., S.C.L.
 Robert John Biron, Esq., B.A., S.C.L.
 Joseph Gillespie O'Dwyer, Esq.
 Spencer Perceval, jun., Esq., B.A.
 Richard Vigors Doyne, Esq., M.A.
 William H. Perfect, Esq., L.L.B.

INNER TEMPLE.—June 9.

A. Boyd Purcell, Esq., B.A.
 Henry Rowcliffe, Esq., M.A.
 Benjamin Bousfield Swan, Esq., B.A.
 John Fell, Esq.
 John Walker, Esq.
 Charles Godfrey Price, Esq., M.A.
 Alexander Henry Ross, Esq., B.A.
 Robert James Baker, Esq., B.A.
 William Mayo, jun., Esq.
 Hon. Thomas Charles Bruce, M.A.
 Edward Waldron Haywood, Esq., S.C.L.
 Thomas Oliver, Esq.
 Thomas Baker, Esq.
 William Francis Kemp, Esq., M.A.
 George Crampton Leech, Esq., B.A.

June 13.

George Hunter Cary, Esq.

MIDDLE TEMPLE.—June 9.

William Brownrigg Elliot, Esq.
 Henry Cary Dangar, Esq., B.A.
 William Henry Griffiths, Esq., B.A.
 Henry Arkley Eglinton, Esq.
 Charles Leeming, Esq.
 John Francis Kellett Dillon, Esq., B.A.
 James Henry James, Esq.
 James Charles Mander, Esq.

GRAY'S INN.—June 9.

Kenneth Leith Sutherland, Esq.
 John Holker, Esq.

June 14.

Charles Wray Lewis, Esq.

SELECTIONS FROM CORRESPONDENCE.

BREACH OF PROMISE OF MARRIAGE.

A. engages to marry the illegitimate daughter of *B.*, on condition that in the settlement, to be made before their marriage, there should be contained a covenant on the part of the reputed father, tenant in tail in possession of real estate, to bar the entail and re-settle it to his own use during his life, with remainder to his daughter in fee. Deeds are prepared and engrossed in accordance with this stipulation, and ready for signature, when the father suddenly died having only executed the marriage settlement. *A.*

refuses in consequence to perform his engagement. Can the daughter, agreeably to the legal maxim "*Lex neminem cogit ad impossibilia*," the act of God having prevented the performance of the condition, bring an action against A. successfully to recover damages for breach of promise? **IGNOTUS.**

ACKNOWLEDGMENTS OF DEEDS BY MARRIED WOMEN.—LEASES.

It is commonly said, emphatically, that, since the 3 & 4 Wm. 4, c. 74, and as the result of the clauses therein relating to married women, *every* deed (with the one exception of that of protector) must be acknowledged by the wife. Quære is this so in the case of a lease made in conformity with the Statute 32 Hen. 8, c. 27? Does not section 78 of the former Act reserve to the wife her power of concurring in such lease by *sealing* same, without more?

I fear it arises from a degree of confusion in my own mind, but I cannot clearly gather the exact import of the concluding clause of sect. 3 (32 Hen. 8), taken in connexion with the reservation of rent to husband and wife required by the former part of this section. I have looked into Tomlin's Law Dictionary, Bacon's Abridgment, Newman's Conveyancing, and Woodfall's Landlord and Tenant, but cannot satisfy myself, *on authority*, as to the mode of taking a surrender of such a lease, whether it may be done at all, and if so, whether to wife or husband and wife? I should feel obliged if some of your readers would enlighten me by their remarks.

LEGALIS.

COUNTY COURT.—"MY AUNT'S CASE."— "SUBSTANTIAL JUSTICE."

A defendant having alleged his inability to pay the plaintiff's demand the plaintiff admitted it, but maintained that though the defendant himself could not pay, he had an aunt who could; and the Judge being of this opinion, made an order against the aunt. This is said to be a leading County Court authority, and is commonly cited as "*My Aunt's Case*."—Crosgate's case (8 Rep. 66), a Dialogue in *y^e Shades on Special Pleading Reform*, p. v., printed by Bult, 25, New Quebec Street, Portman Square. 1854. For private circulation only. **L.**

LIST OF LONDON COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

Appleby, Saml, 6, Harpur Street, Red Lion Square.

Allen, Chas. Pettitt, 17, Carlisle Street, Soho Square.

Blake, Charles, 22, College Hill.

Burton, Edwd. Frederick, 7, Chancery Lane.

Bonner, John George, 16, London Street, Fenchurch Street.

Boodle, John, 16, Upper Montague Street.

Broughton, Francis, 4, Falcon Square.

Casley, John, 31, Guildford Street, Russell Square.

Cole, Charles Nicholas, 4, Adelphi Terrace.

Cuff, Christopher, 82, St. Martin's Lane.

Horn, Richard, 78, King William Street, City.

Hill, Henry, 1, Bury Court, St. Mary Axé.

Holt, Charles, 93, Guildford Street, Russell Square.

Lindo, Nethaneel, 17, King's Arms Yard.

Linklater, James Harvie, 17, Sise Lane.

Lilley, Joseph, High Road, Peckham, and 41, Blackman Street, Southwark.

Mackeson, Edward, 59, Linc. Inn Fields.

Peachey, James, 17, Salisbury Square.

Pulley, Chas. Horton, 28, Great Winchester Street.

Rackham, Willoughby Breare Still, 46, Lincoln's Inn Fields.

Sismey, Thomas, 11, Serjeants' Inn.

Towse, John Beckwith, 24, Laurence Pountney Lane.

Walls, William Albert, 6, Bloomsbury Square.

Wedlake, Henry Brayley, 10, King's Bench Walk.

Wingate, Geo. Theodore, 9, Copthall Court.

PROFESSIONAL LISTS.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 23rd May to 16th June, 1854, both inclusive, with dates when gazetted.

Barret, Edward, and Joseph Morton Barret, Otley and Leeds, Attorneys and Solicitors. June 9.

Caddick, Elisha, and Charles Henry Bayley, West Bromwich, Attorneys, Solicitors, and Conveyancers. June 6.

De Lara, Michael Cohen, and William Fogg, Manchester, Attorneys and Solicitors. May 26.

Jenkyn, James and Osborn Augustus Jenkyn, John Street and Buckingham Street, Adelphi, and 3, Sherborne Lane, City, Solicitors, Attorneys, and Conveyancers. June 9.

Lothian, Maurice, and James Finlay, Edinburgh, Solicitors. June 2.

Newnam, Thomas, and Arthur Griffin, Middlesborough, Attorneys and Solicitors. May 26.

Truwhitt, Charles, and Henry Morton Ody, 51, Lincoln's Inn Fields, Attorneys and Solicitors. May 26.

Watson, James Otley, and George Webster, Liverpool, Attorneys and Solicitors. June 6.

Wilding, Richard, and John Fisher, Blackburn, Attorneys and Solicitors. June 6.

Wordsworth, Henry, and Thomas Dunn, 32, Threadneedle Street, and the South Sea

House, Threadneedle Street, Attorneys, Solicitors, and Conveyancers. June 9.

COUNTRY COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

Appointed under the 16 & 17 Vict. c. 78, with dates when gazetted.

Burt, William Curtis, Reigate. May 30.
Chamberlain, Ayling, Portsea. May 26.
Fox, Frederic, Norwich. June 6.
Franklin, James, Halifax. May 26.
Gwyer, George Wright, Bristol. June 16.
Heathcote, Edward, Hatfield. May 26.
Hollier, Henry John, Aberdare. June 6.
Jessop, Richard, Holmfirth. May 30.
Kitson, Henry, Wolverhampton. May 30.
Knowles, Isaac, Wellington, Salop. June 9.
Shapland, William, Devonport. May 30.

Winterbotham, John Brend, jun., Cheltenham. June 16.

PERPETUAL COMMISSIONERS.

Appointed under the Fines and Recoveries' Act, with dates when gazetted.

Plaskitt, William, Gainsborough, in and for the parts of Lindsey, in the county of Lincoln. June 13.

Welchman, Robert Frederick, Southam, in and for the county of Warwick. May 23.

NOTES OF THE WEEK.

NEW MEMBER OF PARLIAMENT.

Abel Smith, jun., for the County of Hertford, in the room of Thomas Plumer Halsey, Esq., deceased.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Court of Chancery.

(Coram Lord Chancellor and Lords Justices.)
In re Winch's Trusts. March 18, 29; April 21; June 14, 1854.

WILL.—CONSTRUCTION.—ANNUITY.—ISSUE.

*The testator, by his will, gave to Mrs. M. an annuity of 600*l.* sterling, to commence six months after his decease, for her life and the issue from her body lawfully begotten; on failure of which to revert to his heirs; and he requested two friends to act as trustees, so that the annuity might be secured to Mrs. M.'s sole use and benefit, and be paid to her quarterly or half-yearly, as they might deem proper: Held, on appeal from Vice-Chancellor Stuart, that the word "issue" was a word of purchase, and not of limitation, and that the children and grandchildren living at Mrs. M.'s death were entitled to the annuity during their lives, but not to the annuity fund.*

THE testator, John Winch, by his will, dated in March, 1796, gave and bequeathed to Mrs. Anna M. Mealy an annuity of 600*l.* sterling, to commence six months after his decease, for her life, and the issue from her body lawfully begotten; on failure of which to revert to his heirs; and he requested his friends Mr. Kindersley and Mr. Cockburn to act as trustees, so that the annuity might be secured for Mrs. Mealy's sole use and benefit, and be paid to her quarterly or half-yearly, as they might deem proper. On the testator's death in June 1797, his executors, Messrs. George and James Winch, by indenture dated in May, 1798, assigned part of the assets upon trust to pay the annuity to Mrs. Mealy's trustees for her sole use and benefit during her natural life, and from and after her decease then to transfer the fund to Messrs. George and James Winch, their heirs, executors, or administrators, who thereby declared they would thereupon pay the

annuity to such issue of the body of Mr. Mealy according to the will. Mr. Mealy died in 1805 without leaving any issue, and in 1808 his widow married Mr. Naylor, and died in 1851, having survived Mr. Naylor, and leaving two children issue of such marriage, and also grandchildren. It further appeared that by a deed dated in March, 1812, Mrs. Naylor had for the considerations therein mentioned (which included a compromise of the matters in dispute between her and the executors, and that she should have an annuity of 600*l.* for her life, and her husband if he should survive, 300*l.* for his life) assigned all her interest under the testator's will to Mr. George Winch, the surviving executor, and that a bill to set aside this deed had been dismissed—the decision on appeal being affirmed. The fund was paid into Court under the 10 & 11 Vict. c. 96, and Mr. George Winch's representative now presented a petition for a transfer of the stock under the deed of March, 1812. The Vice-Chancellor Stuart held, that the annuity was in the nature of personalty, and that the word "issue" was a word of purchase, and that Mrs. Naylor took an equitable interest for life only to her separate use, with a gift of the legal estate to her trustees during her life, and that on her death her children were entitled as a class in equal shares as joint tenants.

Solicitor-General, Lee, and Archibald Smith in support; Rolt and G. M. Giffard for Mrs. Naylor's children; C. P. Stewart for her grandchildren; Malins and C. Forster for the executors; W. Hislop Clarke for the trustees.

Cur. ad. vult.

The Court said, that in accordance with the decision of Lord Chancellor Thurlow in *Knight v. Ellis*, 2 Bro. C. C. 569, the annuity must be considered as personalty, and the interest therein of Mrs. Naylor limited to her life. Such being the case, and the word "issue" being treated as a word of purchase and not of limitation, the children and grandchildren

living at the death of Mrs. Naylor were entitled to the annuity during their lives, and not to the annuity fund, and the order of the Court below would be varied in that respect.

(Coram Lord Chancellor and Lords Justices.)

Parker v. Sowerby. June 14, 1854.

WILL.—CONSTRUCTION.—DISCHARGE OF WIFE'S DOWER.

Where a testator, by his will, empowered his trustees to cut timber on, grant leases of, and to sell certain estates, held, dismissing an appeal from Vice-Chancellor Kindersley, that such estates were discharged from his wife's dower.

THIS was an appeal from the decision of Vice-Chancellor Kindersley (reported 1 Drewry, 488). The testator, by his will, dated in August, 1833, after appointing his wife sole executrix, bequeathed to her all his personal property, to her own use, and he directed her out of the rents or arrears of rent due at his death to pay his debts, &c. He then gave an estate to his nephew, John Pollock, subject to an annuity of 40*l.* to his, the testator's wife, and after appointing certain persons his trustees, he gave to them all his estate at Sowerby Row, in the parish of Castle Sowerby, and his estate at Longlands, in the parish of St. Mary Without, with power to let the same, until all his nephews and nieces should be of the age of 21. He also gave to his sister 10*l.* a year to be paid to her for life, the other part of the rents to pay his just debts, in the event of any bonds or notes standing against him at the time of his death; and he directed that after the youngest of his nephews and nieces should be of age, the estates should be sold by his trustees to the best advantage, and the price thereof go equally share and share alike amongst all his nephews and nieces, except the two named, and that, should his sister be living, then his trustees should secure her 20*l.* a year during her life, and after her decease to be divided as above. No wood was to be cut or sold but what might be wanted for necessary repairs of the buildings which the testator left to the discretion of his trustees. The Vice-Chancellor having held that the widow was put to her election in respect of her right of dower in the Sowerby and Longlands' estates, this appeal was presented.

Swanston and *Bagshawe* in support; *Glasse* and *Murray*, contra; *Willcock* and *Bovill* for other parties.

The Court said, that it was evidently the testator's intention to discharge the realty from the wife's dower, which was evidenced by the powers given to the trustees of cutting timber, of granting leases, and of sale, and the appeal would therefore be dismissed.

Vice-Chancellor Kindersley.

Adams v. Bennett. June 14, 1854.

MARRIED WOMAN.—EQUITY TO SETTLEMENT OF REVERSIONARY INTEREST.

Held, that the equity of a married woman to

a settlement does not attach in respect of a reversionary interest to which she is entitled under a will, although her husband has been bankrupt, and an injunction was refused to restrain him from dealing with the same.

THIS was a claim on behalf of a married woman to obtain the settlement of a reversionary interest in certain stock to which she was entitled under the will of a Mr. George Slack, in the event of his daughter dying without issue. It appeared that her husband had been twice bankrupt. An injunction was asked for in the alternative to restrain the husband from dealing with the reversion.

A. J. Lewis, in support, referred to *Ellis v. Ellis*, 1 Vin. Abr. 475.

Amphlett for the assignees, contra.

The Vice-Chancellor said, that although the inclination of the Court was to assist and protect the wife, yet in accordance with the decision of *Osborn v. Morgan*, 9 Hare, 432, 4 (cited by *Darling*, *amicus curiæ*), the declaration could not be made in respect of the reversionary property.

Court of Queen's Bench.

Meyers v. Tills. June 6, 1854.

COUNTY COURT APPEAL.—TROVER.—EVIDENCE OF CONVERSION.

It appeared, on the trial of a plaintiff in the County Court to recover possession of goods, that on the plaintiff making a demand, the defendant had replied he should take advice, but had subsequently handed them over to another party: Held, setting aside the nonsuit with costs, that there was a conversion and not a qualified refusal.

The question, whether the facts amount to a conversion is one of law, on which an appeal will lie from the decision of a County Court Judge.

THIS was an appeal from the decision of the Judge of the Rutland County Court, directing a nonsuit in this plaint, to recover possession of certain goods which were stolen from the plaintiff and found in the defendant's possession. It appeared that on the plaintiff making a demand, the defendant had replied he should take advice, but had afterwards delivered them up to another party. The question was, whether such delivery amounted to a conversion.

Hayes for the plaintiff; *T. Campbell Foster* for the defendant, on the ground there was only a qualified refusal, and that an appeal would not lie.

The Court said, that the question, whether the facts amounted to a conversion, was one of law, for which an appeal would lie, and that as the defendant had given the goods up to a wrong party after a demand by the plaintiff, who was found by the case to be the owner, there was a conversion, and the nonsuit must be set aside with costs.

Regina (ex parte Watermen's Company) v. Read.
June 3, 7, 1854.

WATERMEN'S ACT. — CONSTRUCTION. — MEANING OF WORD "CRAFT" IN S. 37.

Held, that a steam tug is not within the 7 & 8 Geo. 4, c. lxxv., s. 37, which imposes a penalty on any person, not being a freeman of the Watermen's Company, navigating any wherry, lighter, "or other craft," on the river Thames for hire.

THIS was a case for the opinion of this Court on an appeal to the Sessions from a conviction under the 7 & 8 Geo. 4, c. lxxv., s. 37,¹ against the defendant for navigating a steam tug on the river Thames both beyond and within the limits of the Act, in taking a merchant ship into one of the docks. It appeared that the defendant was neither a freeman of the company nor an apprentice to a freeman.

M. Chambers and *Ballantine* in support of the conviction; *Sir F. Thesiger* and *Milward*, contra, *Tisdell v. Combe*, 3 New. & P. 29, was cited.

The Court said, that although the words "or other craft" might be so used as to include a steam tug, yet as this Act established a monopoly, and besides imposed a penalty, it should be construed strictly. These words must be *ejusdem generis* with the preceding words "wherry" and "lighter," and did not include a steam tug. The case cited at bar, and which decided that a steam tug was a craft within s. 57, did not apply, as that section was not to give a monopoly or impose a penalty, but power to make regulations for the safety of the public. The conviction would, therefore, be quashed.

Jackson v. Henderson. June 7, 1854.

RIGHT OF LESSEE TO MANUFACTURE TIN-PLATES UNDER LICENCE TO CARRY ON IRON MANUFACTORY.

It appeared that the defendant occupied certain premises under a lease, which contained a licence authorising his carrying on an iron manufactory, but that he had used the premises for the manufacture of iron plates, which were afterwards tinned on the premises. The jury, in an action by the lessor, had found the works were substantially an iron manufactory: Held, that it was a

¹ Which enacts, that "if any person, not being a freeman of the said company, or an apprentice to a freeman, or to the widow of a freeman of the said company (except as hereinafter is mentioned), shall at any time act as a waterman or lighterman, or ply, or work, or navigate, or cause to be worked or navigated, any wherry, lighter, or other craft, upon the said river, from or to any place or places, or ship or vessel, within the limits of this act, for hire or gain (except as hereinafter is mentioned) every such person shall forfeit and pay for every such offence any sum not exceeding 10*l*."

question for the jury, and a rule for a new trial was refused.

THIS was a rule nisi to set aside the verdict for the defendant and for a new trial. It appeared that the defendant occupied certain works in Cumberland, under a lease from the plaintiff, which contained a licence authorising him to carry on an iron manufactory on the premises, that since 1849 he had used them for the manufacture of iron plates, which were afterwards tinned, and that the number of chimneys had been consequently much increased. On the trial, the jury found, upon the question being left to them, that the works formed substantially an iron manufactory.

Pashley, *Udall*, and *Lloyd* showed cause against the rule, which was supported by *Edward James* and *Brett*.

The Court said, that the question had been properly left to the jury, and the rule was accordingly discharged.

Dress v. Savage. June 7, 8, 1854.

RULE NISI TO ENTER NONSUIT.—OBTAINING JUDGE'S NOTES.

'On a rule nisi to set aside the verdict for the plaintiff and enter a nonsuit, pursuant to leave reserved in an action, being called on, it appeared that the Judge's notes had not been obtained. The case was struck out of the list, and the rule was afterwards discharged.

THIS was a rule nisi obtained on April 19 last, pursuant to leave reserved to set aside the verdict for the plaintiff and enter a nonsuit in this action of ejectment to recover possession of certain premises upon the expiration of an agreement for a lease for three years. It was contended that the defendant was a yearly tenant, and could not be ejected without notice.

The Court struck out the case, upon its appearing when it was called on that the Judge's notes had not been obtained.

The rule was afterwards discharged on the application of *Lush*, who had been instructed to show cause.

Regina v. Alleyne and others. June 14, 1854.

ATTORNEY-GENERAL. — RULE TO QUASH WRIT OF ERROR IN PROSECUTION. — OFFICER OF THE CROWN.

Semble, that it is not open to the Attorney-General to appear for the defendants to show against a rule to quash a writ of error upon the judgment in a prosecution on the ground that it had been sued out with a view to a compromise.

THIS was a rule nisi to quash the writ of error upon the judgment in this prosecution, on the ground that it had been sued out with a view to a compromise.

The Attorney-General, Temple, and Huddleston, for the defendants, appeared to show cause.

The Court said, that the Attorney-General ought to appear officially on the part of the Crown, and not for the defendants. The ground for the rule was, that the Attorney-General, on whose fiat the writ had issued, had been imposed upon. Though there was, according to our criminal jurisprudence, no public prosecutor whose duty it was to appear in all cases on behalf of the Crown, in such a case as the present the Attorney-General ought *ex necessitate rei* to appear in his official capacity. It was to be regretted that the defendants should be deprived of the highest assistance at the Bar, but in a case like the present it was essentially necessary for the Attorney-General to attend, not in his private capacity as an advocate, but to assist the Court in the administration of justice and to see that justice was done. As counsel, however, for the defendants, it would be the duty of the Attorney-General, although it might be not *per fas et nefas*, to use his utmost exertions to obtain the decision of the Court in their favour. He had also the power to enter a *nolle prosequi*, and his predecessor in office had been consulted on this very proceeding.

The Attorney-General said, that under these circumstances he would retire, and the case accordingly stood over to allow the parties an opportunity of retaining other counsel.

Edwin James and Hawkins appeared for the other side.

Plowden v. Campbell. June 15, 1854.

PLAINTIFF IN SERVICE OF EAST INDIA COMPANY.—SECURITY FOR COSTS.

Held, that the plaintiff in an action, who was in the civil service of the East India Company, and resided in Bengal as a civil and sessions Judge, was liable to give security for costs.

THIS was a motion for a rule *nisi* to rescind an order made by Crompton, J., at Chambers, on the plaintiff, to give security for costs in this action. It appeared that he was in the civil service of the East India Company, and resided in Bengal as a civil and sessions Judge.

Hawkins in support, on the ground that the plaintiff was engaged in the public service.

The Court said, that as in the present case the domicile was changed, and there was only a remote prospect of the plaintiff's return to this country, he must give security for costs, and the rule would accordingly be refused.

Court of Common Pleas.

In re Delany. June 14, 1854.

FINES AND RECOVERIES' ACT.—MARRIED WOMAN.—CONVEYANCE BY.

An application was granted for leave to a married woman to execute a conveyance without the concurrence of her husband, from whom she has not heard since 1840.

THIS was an application under the 3 & 4 Wm. 4, c. 74, for leave to Mrs. Delany, a married woman, to execute a conveyance of certain

property to which she was entitled, without the concurrence of her husband, whom, it appeared, she had left in Jamaica in the year 1829, and had not heard from since 1840.

Byles, S. L., in support.

The Court granted the application.

Court of Exchequer.

Clayton v. Percy. June 6, 1854.

INFRINGEMENT OF PATENT.—ATTACHMENT.

The plaintiff had recovered a verdict in an action for the infringement of a patent, and a Judge's order in the nature of an injunction had been obtained and made a rule of Court and personally served on the defendant: Upon his continuing the infringement, a rule was made absolute for an attachment.

THIS was a rule *nisi* granted on May 27 last, for an attachment against the defendant, against whom the plaintiff had recovered a verdict in an action for the infringement of a patent. It appeared that an order in the nature of an injunction had been granted by Platt, B., and had been made a rule of this Court and served personally on the defendant, but that he continued the infringement of the patent at his manufactory in Manchester.

Chance now moved on an affidavit of the service of the rule *nisi* to make the rule absolute, upon the defendant not appearing to show cause.

The Court made the rule absolute accordingly.¹

Vasing v. Watson. June 12, 1854.

ACTION FOR PREFERRING INDICTMENT.—REASONABLE CAUSE.—MALICE.

Held, making absolute a rule for the new trial of an action for maliciously and without reasonable cause preferring a charge of felony against the plaintiff, that although the total want of reasonable cause is evidence from which a jury may infer malice, yet it must be an absolute absence to justify them in finding malice; and that all which is necessary to justify a charge of felony is a reasonable ground of suspicion, and not such an amount of cause for suspicion as would insure a reasonable belief there would be a conviction.

A RULE *nisi* had been granted for a new trial of this action, which was brought against the defendant for maliciously and without reasonable cause preferring a charge of felony against the plaintiff. It appeared on the trial, before Coleridge, J., at the last Northampton Assizes, that the plaintiff was a groom in the stables of the Globe Inn, and had been charged by the defendant with stealing two ducks, which were in an adjoining stable, but were afterwards found near the canal in a bag tied to a brick resembling some in the Globe Inn stables. It also appeared that there were burnt poultry

¹ The attachment was on June 15 discharged on payment of costs.

bones in the fire used by the plaintiff. The magistrate had dismissed the charge which the defendant preferred on the advice of a policeman, whereupon this action was brought. The learned Judge directed the jury that there was a want of reasonable and probable cause, and left the question of malice to the jury, who found for the plaintiff, with 20*l.* damages.

Miller, S. L., and O'Brien showed cause against the rule.

The Court (without calling on *Macaulay and Field* in support) said, that although the total want of reasonable cause was evidence from which a jury might infer malice, yet it must be an absolute absence to justify them in finding malice. All which was necessary to justify a charge of felony was a reasonable ground of suspicion, and not such an amount of cause of suspicion as would insure a reasonable belief there would be a conviction. In the present case there seemed to have been reasonable cause, and the finding of the jury had been grounded on the want of such justification, and the rule would therefore be made absolute.

Theobald v. Railway Passengers' Insurance Company. June 2, 13, 1854.

INSURANCE AGAINST RAILWAY ACCIDENTS.
—ACTION ON POLICY OF.

The plaintiff, whilst stepping out of a train on a railway for the purpose of continuing his journey by another train, missed his footing, and was injured: Held, that this was a railway accident within the meaning of an insurance by the defendants against railway accidents.

Held, also, that the plaintiff could not recover under the policy either for loss of time or profit, but only in respect of his expenses and compensation for the injury.

THIS was an action on a policy of insurance effected by the plaintiff with the defendants, for the payment of 1,000*l.* in case of death, and a proportionate sum for injuries while travelling by railway. The defendants pleaded, that the accident, with which it appeared the plaintiff had met by missing his footing while stepping out of a train for the purpose of continuing his journey by another train, was not a railway accident within the meaning of their insurance ticket. On the trial before *Pollock, L. C. B.*, at the Guildhall Sitings, the plaintiff obtained a verdict for 84*l.* in respect of the accident, and 100*l.* for loss of time, subject to leave reserved to enter the verdict for the defendants, or to reduce the damages on the question, whether the accident was one for which the defendants were liable, and whether, if they were, their liability extended to the loss of time consequent on the accident. A rule had been accordingly obtained on April 24 last.

Bramwell and Phipson showed cause against the rule, which was supported by *Sir F. Thesiger and Davison*.

Cur. ad. vult.

The Court said, that the accident had taken place while the plaintiff was a traveller on the

railway, as he would not be disconnected until he was safely landed on the platform upon arriving at his destination. The rule, therefore, so far as sought to have the verdict entered for the defendants on the ground that the accident was not a railway accident, would be discharged. As to the other ground, it must be made absolute to reduce the damages, as the plaintiff could not recover under the policy either for loss of time or profit. It was only incumbent on the defendants, in cases of accident short of death, to compensate the assured to the extent of his expenses, as well as for the injury.

Sauville v. Commissioners of Inland Revenue.
June 10, 13, 1854.

STAMP ACT.—AD VALOREM DUTY ON POLICY IN MARRIAGE SETTLEMENT.

*Held, that the amount of a policy of insurance on the settlor's own life is not chargeable with the ad valorem duty of 5*s.* per cent. under the 13 & 14 Vict. c. 97.*

BY a marriage settlement the plaintiff transferred to trustees a policy of insurance for 4,000*l.* which he had effected on his own life with the United Kingdom Life Assurance Office. The defendants had held that an *ad valorem* duty of 5*s.* per cent was payable under the 13 & 14 Vict. c. 97, to that amount, whereupon this case was stated for the opinion of the Court.

The Schedule, tit. "Settlement," renders chargeable to an *ad valorem* duty of 5*s.* per cent. "any deed or instrument, whether voluntary or gratuitous, or upon any good or valuable consideration other than a *bona fide* pecuniary consideration, whereby any definite and certain principal sum or sums of money (whether charged or chargeable on lands or other hereditaments or heritable subjects, or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects or not), or any definite and certain share or shares in any of the government or parliamentary stocks or funds, or in the stocks and funds of the governor and company of the Bank of England, or of the Bank of Ireland, or of the East India Company, or of the South Sea Company, or of any other company or corporation, shall be settled or agreed to be settled upon or for the benefit of any person or persons, either in possession or reversion, either absolutely, or for life or other partial interest, or in any other manner whatsoever."

P. Francis for the plaintiff; *Pigott* for the defendants.

The Court said, that no duty was payable under the words in the schedule, and that the plaintiff was entitled to judgment.

Beavan v. McDonnell and another. June 12, 13, 1854.

ACTION TO RECOVER FORFEITED DEPOSIT BY LUNATIC.—EVIDENCE.

On the trial of an action for money had and

received, and to which the defendants pleaded that the same was paid as a deposit on a contract for the purchase of an estate and had been forfeited, evidence was admitted of acts by the plaintiff before and after the contract, showing that his lunacy was of such a nature as to have been manifest when the contract was made. The plaintiff obtained a verdict. A rule for a new trial on the ground of the reception of such evidence was discharged.

To this action for money had and received, the defendants pleaded that the money was paid as a deposit on a contract for the purchase of an estate, and had been forfeited. The plaintiff replied that he was a lunatic at the time of entering into the contract, to which the defendants rejoined that they had entered into the contract fairly and in good faith, and did not know at the time of its being made that the plaintiff was a lunatic. On the trial before *Wightman, J.*, at the last Hereford assizes, evidence was admitted of acts by the plaintiff, before and after the contract, showing that his lunacy was of such a nature as to have been manifest when the contract was made. The plaintiff obtained a verdict, and this rule had been granted on April 24 last for a new trial.

Stinner showed cause against the rule, which was supported by *Whateley, Gray*, and *Phipson*.

The Court discharged the rule.

Attorney-General v. Radloff. June 14, 1854.

INFORMATION.—EXAMINATION OF DEFENDANT ON HIS OWN BEHALF.

Quære, whether the defendant to an information to recover treble value of tobacco of which he had become possessed without payment of duty, is entitled to be examined as a witness on his own behalf.

THIS was a rule nisi granted on April 20 last, for a new trial of this information to recover treble value of tobacco of which the defendant became possessed without payment of duty. On the trial before *Pollock, L. C. B.*, the defendant tendered himself as a witness on his own behalf, but had been rejected on the ground the proceeding was of a criminal nature.

By the 6 & 7 Vict. c. 85, s. 1, "No person offered as a witness shall hereafter be excluded by reason of incapacity from crime or interest from giving evidence, either in person or by deposition according to the practice of the Court on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action, or proceeding, civil or criminal, in any Court, or before any judge, jury, sheriff, coroner, magistrate, or officer having by law or by consent of parties authority to hear, receive, and examine evidence," with the exception of the actual parties; and by the 14 & 15 Vict. c. 99, s. 2, "On the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, or other proceeding in any Court of Justice, or

before any person having by law or by consent of parties authority to hear, receive, and examine evidence, the parties thereto and the persons in whose behalf any such suit, action, or other proceeding may be brought or defended shall, except as hereinafter excepted, be competent and compellable to give evidence, either *vidæ voce* or by deposition, according to the practice of the Court, on behalf of either or any of the parties to the said suit, action, or other proceeding;" but by s. 3, "nothing herein contained shall render any person who in any criminal proceeding is charged with the commission of any indictable offence or any offence punishable on summary conviction, competent or compellable to give evidence for or against himself or herself."

Watson and *J. P. Wilde* showed cause against the rule, which was supported by *Shae, S. L.*, *Best*, and *M'Mahon*.

Cur. ad. vult.

The Court (per *Pollock, L. C. B.*, and *Parke, B.*, dissentientibus *Platt* and *Martin, BB.*) held, that the present was a criminal proceeding within the proviso to the 14 & 15 Vict. c. 99, and that the defendant was not a competent witness. The rule would therefore fall to the ground; but *Alderson, B.*, who had not heard the arguments, suggested the point should be re-argued before the 15 Judges.

In re Stamp Duty on Potter's Deed. May 8; June 14, 1854.

STAMP ACT.—DUTY PAYABLE ON SALE OF GOODWILL OF BUSINESS.

*On the retirement from a firm of one of the partners, the others covenanted to purchase the stock-in-trade for 19,000*l.* and the good-will for 20,000*l.*: Held, that the Commissioners of Inland Revenue had rightly charged 2*s.* 6*d.* per cent. on the 19,000*l.*, and 10*s.* per cent. on 20,000*l.*, under the 14 & 15 Vict. c. 97.*

IT appeared that on the retirement from a firm of one of the partners, the others had covenanted to purchase the stock-in-trade for 19,000*l.* and the good-will for 20,000*l.* The Commissioners of Inland Revenue claimed under the 13 & 14 Vict. c. 97, a duty of 2*s.* 6*d.* per cent. on the 19,000*l.*, and 10*s.* on the 20,000*l.*, and this case was stated under s. 15, on the question, whether the value of the good-will in a business was "property" within the Act.

Phinn for the Crown, cited *Caldwell v. Dawson*, 5 Exch. R. 1.

Hindmarch and *Webster* for the parties, contra, referred to *Lyburn v. Warrington*, 1 Stark. N. P. C. 162; *Warren v. Howe*, 2 B. & C. 281; *Belcher v. Sikes*, 6 B. & E. 234; *Blandy v. Herbert*, 9 B. & C. 396.

Cur. ad. vult.

The Court held that the duty claimed by the Commissioners was payable.

The Legal Observer,

AND

SOLICITORS' JOURNAL

SATURDAY, JULY 1, 1854.

INNS OF COURT AND CHANCERY INQUIRY.

THE important Commission issued by her Majesty for inquiring into the arrangements in the Inns of Court and Inns of Chancery, for promoting the study of the Law and Jurisprudence, and securing a sound education to the students" was notified in the *Gazette* of the 5th May. The Commissioners are Vice-Chancellor Sir Wm. Page Wood, Mr. Justice Coleridge, the Right Hon. Mr. Napier, the Attorney-General, the Solicitor-General, Sir T. Erskine Perry, Mr. Lefevre, Mr. Keating, Q. C., Mr. Greenwood, Mr. James Stewart, and Mr. Germain Lavie.

It appears that the Commissioners lost no time in writing to the five Inns of Chancery, requesting their assistance in the inquiry by communicating a statement of the existing arrangements for promoting the study of the Law, so far as the several Inns of Chancery had made or concurred in any such arrangements. Connected with this branch of their inquiry, the Commissioners particularly requested information as to the Lectures or Examinations provided in those Inns, the existence or non-existence of a Library, and the regulations in respect of admission to such Lectures or Library.

It is probably well known to all our readers that there are no Lectures, nor Examinations, nor Libraries in any of the Inns of Chancery, and we presume that though the Commissioners were also fully aware of the fact, they required an official statement of it from the heads of those ancient houses. No doubt, the proper answers have been returned, and we understand that the Commissioners have recently requested the attendance of some of the Principals to give explanations on the

present state of their respective Inns. We may also anticipate that the like inquiry will be made of the larger Inns.

According to the terms of the Commission, the object is to *secure a sound education to the students* of the law, and the Inns of Chancery will not fail to point out that their members are for the most part Attorneys and Solicitors of the Superior Courts, and,—whatever amendments or improvements are proposed to be effected in regard to students for the Bar,—to urge that due provision should be made for the students of the other branch of the Profession:

Now, it is important to observe, that long before the recent "revival of learning" (so to speak) in the Inns of Court,—before they appointed a Council of Education and instituted Lectures and Examinations,—the attorneys and solicitors, many of them belonging to the Inns of Chancery, founded an institution in the centre of the five Inns of Chancery, namely, between Bernard's Inn, Staple Inn, and Clifford's Inn on the east of Chancery Lane, and New Inn and Clement's Inn on the west of that locality. There, nearly 100,000*l.* has been laid out on land, buildings, books, &c.; and there for upwards of 20 years Lectures have been delivered and Examinations taken place. In fact, more than half of the 10,000 attorneys and solicitors now practising in England and Wales, have been examined at the Hall in Chancery Lane.

It cannot, therefore, be said, that arrangements for the study of the law and securing a sound education have been neglected in the second branch of the Profession. It may be admitted, that the large expenditure which has taken place, came not from the coffers of the Inns of Chancery; but from the pockets of the individual members of those societies and their

brethren. It is manifest, however, that a more extensive Library, more efficient courses of Lectures, and a better Examination, have been secured by those united exertions in the Incorporated Law Society than could have been effected in the separate Halls of the Inns of Chancery.

In considering this subject, it should be borne in mind that formerly the attorneys and solicitors were required to belong either to an Inn of Court or an Inn of Chancery, but that for many years past they have been excluded from the larger Inns. It is therefore highly to their credit that by their personal exertions, and out of their own funds, they have formed an association for the better acquisition of legal knowledge and the general improvement of their Profession.

The members of the Inns of Chancery, practical and judicious men as they are, will have regard to the general welfare of their body, and will not only protect the interests of their respective Societies, but make inquiry into the three *quasi* defunct Societies,—Furnival's Inn, Thavies' Inn, and Lyon's Inn. If we are not misinformed, the ground-rent of Furnival's Inn, amounting to several hundreds a year, is received by Lincoln's Inn,—no doubt in sacred trust to be applied for the behoof of that section of the legal community to which the old Inn belonged. Moreover, we have heard that whilst the immediate ground-rent—say 500*l.* a year—is thus received, the builder's lease will expire in less than 40 years, and the whole improved rent will then devolve on Lincoln's Inn upon trusts, which will of course be duly inquired into.

Of Thavies Inn and Lyon's Inn we have not at present received any similar information; but we take it for granted that the Commissioners, whose powers are equally extensive over both classes of Inns, will call the proper parties before them and ascertain the authority on which leases have been granted, the duration of the term, and such other particulars as they may be warranted in requiring.

Taking a walk round these "old Hostels," we observe that several of them are still in a dilapidated state and require extensive repairs or rebuilding. Many parts of them have indeed of late years been rebuilt, and many alterations and improvements effected. Thus in Staple Inn several thousand pounds must have been laid out on the handsome edifice occupied by the Taxing Masters of the Court of Chancery. In New Inn a

large and substantial house has just been erected, comprising many sets of chambers. So in Clement's Inn there are several new buildings, and extensive repairs have been effected in others. In both the latter Inns, new gateways and carriage-ways have been constructed, and various other alterations made. In Clifford's Inn, a few years ago, one of the largest houses was rebuilt, and it is probable that further buildings or costly repairs will soon be required.

We are not aware, therefore, that any expectation can be entertained of the grant of any surplus funds from the Inns of Chancery for the purpose of legal Education; but if there were any, we can readily conjecture a legitimate mode of applying such surplus, by increasing the number of Lectures at the Incorporated Law Society, or otherwise contributing to the improvement of the Profession. At all events, we feel assured, that due attention will be paid to the claims of the attorneys and solicitors.

DIVORCE AND MATRIMONIAL CAUSES' BILL.

THIS Bill proposes to enact as follows:

That from and after a day to be named by her Majesty by order in Council, not sooner than Jan. 1, 1855, all jurisdiction now vested in any Ecclesiastical Court in respect of divorces *a mensâ et thoro*, suits of nullity of marriage, of jactitation of marriage, for restitution of conjugal rights, and all jurisdiction in matters matrimonial, shall cease; (s. 1).

After such day the Court of Chancery shall have power to determine matters matrimonial, and to make decrees of nullity of marriage, of divorce *a mensâ et thoro*, for alimony, and for restitution of conjugal rights; but no suit shall be entertained for jactitation of marriage; (s. 2).

In suits for obtaining such decrees, the Court of Chancery shall proceed on principles and rules, as nearly as may be, conformable to those on which the Ecclesiastical Courts have acted; (s. 3).

Proceedings under this Act may be instituted either by bill or claim, in the same manner as other proceedings in the Court of Chancery, subject to any orders; provided that, with every bill or claim seeking a decree of nullity of marriage or of divorce *a mensâ et thoro*, the plaintiff shall file an affidavit, stating his or her belief as to the truth of the facts alleged, and denying collusion with the defendant; (s. 4).

Decrees and orders to be made by the Court of Chancery shall be enforced in the same manner as other orders and decrees of the Court; (s. 5).

Wherever before such day any decree or order of any Ecclesiastical Court shall have

been made in any cause or matter matrimonial, the same may be enforced by the Court of Chancery in the same way as if originally made by the said Court of Chancery; (s. 6).

All suits in matters matrimonial pending in any Ecclesiastical Court shall be transferred to the Court of Chancery, subject to such orders as the Lord Chancellor shall make in that behalf; (s. 7).

Upon any bill or claim filed by a wife, alleging that she has been deserted by her husband, the Court of Chancery, on being satisfied of the truth of such allegation, and that such desertion has continued without reasonable excuse for three years or upwards, may, if it shall see fit, make an order for payment to her of alimony in the same way as on a decree for a divorce *a mensâ et thoro*, and such order shall remain in force until the Court shall make order to the contrary; (s. 8), and it may direct the same to be paid either to the wife or to any trustee on her behalf to be approved by the Court, and may impose terms as to the giving indemnity to the husband, and any other terms or restrictions which may seem expedient; (s. 9).

In any suit for obtaining a divorce *a mensâ et thoro* or of nullity of marriage, or for payment of alimony by reason of desertion, the Court of Chancery may, before final decree, make interim orders, and provision in the final decree with respect to the custody, maintenance, and education of the children; (s. 10).

Any person conceiving himself to be aggrieved by any decree or order of the Court of Chancery, shall have the same right of rehearing and appeal as against any other decree or order; (s. 11).

The Lord Chancellor, the Lord Chief Justice of the Queen's Bench, the Master of the Rolls, and such three other persons, one of whom shall be a Judge of the Superior Courts of Common Law, as her Majesty may appoint by letters patent under the Great Seal, or any three or more of them, of whom the Lord Chancellor and the Lord Chief Justice of the Queen's Bench, for one of the said Judges, shall always be two, shall constitute a Court, to be called "The Court of Divorce," which shall be a Court of Record, and hold its sittings as it shall find expedient; (s. 12).

The Court to have a seal; (s. 13).

The registrars and other officers of the Court of Chancery shall attend the sittings and assist in the proceedings as the Lord Chancellor shall direct; (s. 14).

The said Court of Divorce shall have power to make rules and orders, and regulate the fees payable, which shall be carried to the credit of the Suitors' Fee Fund of the Court of Chancery, and be collected by stamps, according to the 15 & 16 Vict. c. 87; (s. 15).

Any husband may present a petition to the Court of Divorce, praying that his marriage may be dissolved, on the ground that his wife has been guilty of adultery; and any wife may present a like petition, on the ground that her husband has been guilty of incestuous adultery

or bigamy, or of an unnatural crime, or an attempt to commit the same; and every such petition shall state the facts on which the claim is founded: Provided that no person shall, for the purpose of such petition, be deemed guilty of bigamy or of an unnatural crime, or an attempt to commit the same, unless he shall have been convicted thereof in due course of law; (s. 16).

The party prosecuting such petition shall file an affidavit stating that the allegations are true to the best of the deponent's belief, and that there is no collusion or connivance between the deponent and the other party to the marriage sought to be dissolved; (s. 17).

Every such petition shall be served on the party to be affected thereby, either within or without her Majesty's dominions, in such manner as the Court shall direct; provided, that the Court may dispense with such service in case it shall seem expedient so to do; (s. 18).

The Court may issue writs of subpoena, or subpoena *duces tecum*, under the seal of the Court, commanding the attendance of witnesses; and such writs may be served in any part of Great Britain or Ireland; and every person served therewith shall be bound to attend and give evidence, in the same manner as if issued from a Superior Court of Common Law; (s. 19).

The evidence shall be given *viva voce*, unless the Court shall think it expedient to permit the same to be taken by Commission; and in such cases the Court may issue a commission for the purpose (s. 20), under the seal of the said Court, and the proceedings shall be conducted in the same way as proceedings in the Superior Courts of Common Law under the 1 Wm. 4, c. 22, except as may be otherwise directed by the said Court; (s. 21).

The Court may order the attendance of the petitioner, and examine him or her, or permit him or her to be examined or cross-examined, on the bearing; but no such petitioner shall be bound to answer any question tending to show that he or she has been guilty of adultery; (s. 22).

The Court may allow any of the matters stated in the said petition to be verified by affidavit or declaration; (s. 23).

The Court, before proceeding to hear the evidence, shall appoint a shorthand writer to take down the same, and one or more extended copy or copies thereof shall be filed for the use of the Court; and such shorthand writer shall, before he acts, be sworn faithfully to take down and extend the evidence, and shall be paid, out of the Suitors' Fee Fund, such remuneration as the Court may direct; (ss. 24, 25).

All witnesses examined shall, before giving their evidence, be sworn, except in the case of persons exempted upon trials at Nisi Prius, all which persons may give their evidence upon affirmation, as on such trials (s. 26); and all persons wilfully deposing or affirming falsely, shall be deemed guilty of perjury, and liable to all the pains and penalties attached thereto; (s. 27).

The Court may adjourn the hearing of any such petition, and require further evidence thereon, if it shall see fit; (s. 27).

Upon the hearing of any such petition, the Court shall be satisfied as to the fact of the adultery, bigamy, unnatural crime, or attempt therein alleged, and that the petitioner has not been conniving at or condoned the same, and has not during the marriage committed adultery; (s. 29).

In case the Court shall be satisfied on the evidence that the alleged adultery, &c., has been committed, and that the complaining party has not committed adultery during the marriage, or was not conniving at the adultery, &c., and that such adultery, &c., has not been pardoned by the petitioner, then the Court shall pronounce a decree declaring such marriage to be dissolved: Provided that the Court shall not be bound to pronounce such decree if the petitioner shall, in the opinion of the Court, have been guilty of unreasonable delay in presenting or prosecuting such petition; (s. 30).

The Court may, if it think fit, in any decree on the petition of a husband, make it a condition that the petitioner shall, to the satisfaction of the Court secure to the wife such gross or annual sum of money for a term not exceeding her life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it shall deem reasonable, and may refer it to one of the conveyancing counsel, to settle and approve of a deed to be executed by the petitioner and other parties; and the Court may in such case, if it shall see fit, suspend the pronouncing of its decree until such deed shall have been duly executed; (s. 31).

Upon a decree dissolving marriage, the Court of Chancery may, upon summary application by petition, make such orders as to the custody, maintenance, and education of infant children, as if such children were wards of Court; (s. 32).

In case the Court of Divorce shall not be satisfied that the alleged adultery, &c., has been committed, or shall be satisfied that the petitioner has during the marriage been guilty of adultery, or was conniving at the adultery, &c., or has pardoned the party guilty thereof, then the said Court shall dismiss the said petition; (s. 33).

Either party dissatisfied with the decision of the Court may, within three calendar months, appeal to the House of Lords, or if Parliament is not sitting at the end of such three months, then within 14 days next after its meeting; (s. 34).

The evidence on which the said Court has proceeded shall be used on the hearing of such appeal, and the decision of the said Court may thereupon be confirmed or reversed or varied, as to the said House may seem just (s. 35); or the said House may remit the case to the Court of Divorce to obtain further evidence on the matters in dispute, and the said Court shall thereupon deal with the case as if no decree

had been made (s. 36); and the said House may, on the hearing of any appeal against any order dismissing such petition, declare that the same ought not to have been dismissed, but that the marriage ought to have been dissolved, and may declare the same accordingly to be dissolved, on such terms in all respects as the said Court might have done; (s. 37).

When the time limited for appealing against any decree dissolving a marriage shall have expired, and no appeal shall have been presented, or if in the result of any appeal such marriage shall be declared to be dissolved, it shall be lawful for the parties thereto to marry again; (s. 38).

The said Court on the hearing of any petition, and the House of Lords on the hearing of any appeal, may make such order as to costs as may seem just; provided that there shall be no appeal on the subject of costs only; (s. 39).

If any copy of, or extract from, any charter, deed, decree, report, record, licence, or other document deposited in any of the offices under the control of any Court of Law or Equity, or Ecclesiastical Court, or preserved in any public registry, shall be required for the purposes of this Act, the officer having the custody of such charter, &c., shall, upon an order signed by the Lord Chancellor, furnish such copy or extract, and which shall not be liable to stamp duty; (s. 40).

"All persons who have been admitted to practise as advocates or proctors respectively in any Ecclesiastical Court in England or Wales, as well as all barristers, attorneys, and solicitors now entitled to practise in the Superior Courts at Westminster, shall be entitled to practise as counsel, solicitors, or attorneys respectively in the said Court of Divorce, and also in all matters matrimonial in the said Court of Chancery, subject to such regulations as may be made by the said Courts respectively;" (s. 41).

Every Judge or officer who shall be deprived of any of the emoluments of such office, shall be entitled to have an adequate compensation, to be assessed by the Lords Commissioners of her Majesty's Treasury, and paid out of the Suitors' Fee Fund of the Court of Chancery, regard being had to the manner of his appointment, and to his term or interest therein, and all other circumstances of the case; and every person entitled to such compensation shall deliver to the Commissioners a statement in writing, setting forth the amount received by him or his predecessors in every year for five years, on account of the emoluments in respect whereof he shall claim such compensation, distinguishing the office in respect whereof the same shall have been received, and containing a declaration that the same is a true statement according to the best of his knowledge, information, and belief, and also setting forth the sum claimed by him as such compensation; and the Commissioners shall take the same into consideration, and determine thereon, and make such order as to them shall seem just and such order, signed by the Commissioners

shall be binding on all parties; provided that such person shall attend at any meeting of the Commissioners for the investigation of such claim, and upon his oath answer all such questions as shall be asked by them touching the matters set forth in such statement, and produce all books, papers, and writings in his possession, custody, or power, relating thereto; provided that if any person holding any office shall be appointed after the passing of this Act to any public office under this Act, or under the Crown, or under the Court of Chancery, the payment of the compensation, so long as he shall continue to receive the salary of such office, shall be suspended, if the amount of such salary be greater than the amount of such compensation, or, if not, it shall be diminished by the amount of such salary; (s. 42).

MERCANTILE LAW.

FIRST REPORT OF THE COMMISSIONERS.

To the Queen's most excellent Majesty.

YOUR Majesty having been pleased to issue a Commission directing your Majesty's Commissioners to inquire and ascertain how far the Mercantile Laws in the different parts of the United Kingdom of Great Britain and Ireland may be advantageously assimilated, and also whether any and what alterations and amendments should be made in the Law of Partnerships, as regards the question of the limited or unlimited responsibility of partners, your Majesty's Commissioners have proceeded to consider the matters so confided to them; and having completed their inquiries and deliberations as to the expediency of making alterations in the Law of Partnership, so far as relates to the limited or unlimited liability of partners, deem it right at once to lay before your Majesty the conclusion at which they have arrived.

With a view to obtaining well-considered opinions on the subject, your Majesty's Commissioners framed a series of questions which they thought calculated to elicit information, and caused them to be widely circulated both at home and abroad; and those questions and the answers received are printed in an Appendix to this Report.

Your Majesty's Commissioners have been much embarrassed by the great contrariety of opinion entertained by those who have favoured them with answers to their questions. Gentlemen of great experience and talent have arrived at conclusions diametrically opposite; and in supporting those conclusions have displayed reasoning power of the highest order. It is difficult to say on which side the weight of authority in this country preponderates. The opinions received from foreign countries preponderates in favour of limited liability; but many of the foreign correspondents, while bearing testimony to the beneficial operation of the law as to partnerships with limited liability in their countries, suggest that it may

nevertheless well be, that the circumstances, of the trading interests in the United Kingdom may give it a very different operation here. Your Majesty's Commissioners have carefully perused and considered these various opinions; two of their body, Lord Curriehill and Mr. Slater, have put into writing their thoughts on the subject, for the assistance of their fellow Commissioners who have thought it right to make these communications public by printing them in the Appendix.

In considering this subject, the question which appeared to your Majesty's Commissioners of paramount importance was, whether the proposed alteration of the law would operate beneficially on the general trading interests of the country? and they have arrived at the conclusion that it would not. They have not been able to discover any evidence of the want of a sufficient amount of capital for the requirements of trade; and the annually increasing wealth of the country, and the difficulty of finding profitable investments for it, seem to them sufficient guarantees that an adequate amount will always be devoted to any mercantile enterprise that holds out a reasonable prospect of gain, without any forced action upon capital to determine it in that direction;—while any such forced action would have a great tendency to induce men to embark in speculative adventures to an extent that would be dangerous to the interests of the general commerce of the country. Moreover, your Majesty's Commissioners find no reason to suppose that the reputation of British merchants, either at home or abroad, would be raised by the establishment of firms trading with limited liability, but the contrary; for many of the opinions in favour of such a system are coupled with a recommendation of more stringent regulations than those now existing for the prevention of fraud. But if such partnerships would increase the danger of fraud, they can hardly be otherwise than prejudicial to our mercantile reputation.

Your Majesty's Commissioners have also considered the subject with regard to the benefit which it may be calculated to confer on individuals, by enabling them to obtain capital and establish themselves in business by the aid of partners incurring a limited liability only. It cannot be doubted that instances occur where men of probity and talent would derive benefit from such a system, but your Majesty's Commissioners are of opinion that such benefit has been greatly overrated.

Further, it appears to your Majesty's Commissioners that the benefit to be acquired by the managing or limited partners will be at the expense of a more than countervailing amount of injury to traders bearing the burden of unlimited liability, who will have to enter into competition with those who enjoy the protection to be given by the proposed Law.

But while your Majesty's Commissioners are of opinion that it is not expedient to alter the law and allow all persons at their own election to trade with limited liability, they are aware

that many useful enterprises calculated to produce benefit to the public and profit to those who engage in them, are of such magnitude that no private partnership can be expected to provide the funds necessary to carry them into effect, or to have the means of superintending and managing them, of which docks, railways, and extensive shipping companies may be taken as examples. And there are others of a more limited character, from which benefit to the humbler classes of society may be expected to accrue, such as baths and washhouses, lodging-houses, and reading-rooms, to the establishment of which by large capitalists there is little inducement. These two classes of undertakings it may therefore be desirable to encourage, by limiting the liability of those who embark in them. But with regard to both, your Majesty's Commissioners think they should be subjected to some previous inquiry as to the means of carrying them into effect, and the prospect of benefit to the promoters and the public. With regard to those undertakings the execution of which involves an interference with the rights of property, the sanction of Parliament always has been and still ought to be required. With regard to others, the privilege of having a limited liability may be granted by charter; and for the purpose of regulating the granting of charters, your Majesty's Commissioners recommend that a board be established to decide upon all applications for them; and this board should require, in all cases, compliance with certain fixed regulations.

Much observation has been made upon the expense of obtaining charters or private Acts of Parliament. Where a charter is applied for calculated to affect injuriously the interests of others, it seems contrary to natural justice to refuse them an opportunity of stating and proving the validity of their objections, but regulations should be made to keep the expenses of such inquiry as low as possible. Your Majesty's Commissioners feel that it is beyond their province to offer any suggestion respecting the expense of obtaining private Acts of Parliament. If a charter is asked for the establishment of baths and washhouses, or other things of that nature, opposition is hardly to be anticipated, and the Board would have little to do beyond seeing that their fixed rules have been complied with, and the expense ought to be very small.

The attention of your Majesty's Commissioners has been directed to another subject which appears to them within the spirit, if not within the letter, of their commission, viz., the expediency of a further relaxation of the Usury Laws, and of enabling capitalists to lend money to traders at a rate of interest, and agents and servants to receive remuneration for their services by money payments, varying with the profits of the business, without being exposed to the hazard of being rendered liable as partners to the creditors of the concern.

In *Ex parte Hamper*, 17 Ves., page 403 (a case relating to the remuneration of an agent

or servant), Lord Eldon appears to have considered that such contracts might exist without constituting a partnership, provided, of course, that they are made in good faith and are not partnerships in disguise; and in *Pott v. Eytow*, 3 Common Bench Reports, page 32, Lord Chief Justice Tindal expressed an opinion, that it made no difference whether the money was received by way of interest on money lent, or wages, or salary as agent, or commission on sales. But it appears to your Majesty's Commissioners that in practice they would be attended with so many difficulties and with so many results, which the contracting parties would probably consider very objectionable, that your Majesty's Commissioners do not expect they will ever be extensively made.

In the report of the Committee of the House of Commons on the Law of Partnership, dated 8th July, 1851, it was recommended "That power be given to lend money for periods not less than twelve months, at a rate of interest varying with the rate of profits in the business in which such money may be employed, the claim for payment of such loans being postponed to that of all other creditors; that, in such case, the lender should not be liable beyond the sum advanced; and that proper and adequate regulations be laid down to prevent fraud."

As to the expediency of adopting that suggestion, your Majesty's Commissioners, who concur in the residue of this report, are not agreed in opinion.

With regard to the Usury Laws, your Majesty's Commissioners are of opinion that it would be expedient to repeal them altogether, as far as they affect personal securities, but offer no opinion with reference to real securities.

In concluding their brief report, your Majesty's Commissioners feel, that although the details of our mercantile laws may require correction, yet while there is on every side such abundant evidence of satisfactory progress and national prosperity, it would be unwise to interfere with principles which, in their judgment, have proved beneficial to the general industry of the country.

We humbly offer to your Majesty's gracious consideration this our First Report.

(Signed)	T. B. CUSACK SMITH.	(L.S.)
	C. CRESSWELL.	(L.S.)
	JOHN MARSHALL.	(L.S.)
	THOMAS BAZLEY.	(L.S.)
	RO. SLATER.	(L.S.)

[Mr. Bramwell's able paper in favour of permitting limited liability partnerships shall be noticed soon.]

NOTICES OF NEW BOOKS.

The Shipping Laws of the British Empire, consisting of Park on Marine Insurance and Abbott on Shipping. Edited by GEORGE ATKINSON, Serjeant-at-Law. London: Longman & Co. 1854.

MR. SERJEANT ATKINSON, in this volume, has departed from the modern practice of so enlarging former standard treatises by full statements of recent Statutes and decisions, that the original work is almost overwhelmed in the new edition. His object has been, as indicated in the title-page, to restore "*Park on Marine Insurance*," and "*Abbott on Shipping*," to their original simplicity and design, and he has ably effected his purpose in a single volume of about 300 pages.

The early editions of those works were small 8vo. volumes, and the learned Editor has retained them as they were originally written, on the general principles of the law, instead of attempting to make the book serve at once the threefold purpose of a treatise on general principles,—Statutes at large,—and law reports; but he has omitted no Act of Parliament, nor any reported case. Where either the one or the other interfered with the original text, he has introduced it, "*not in extenso*," a system (as the learned Serjeant contends) no less derogatory to learning than injurious to the utility of a book," but he has analysed, abridged, and incorporated the new matter with the text itself. Thus he has embodied in the work with the utmost conciseness the *Pilot Acts* (6 Geo. 4, c. 125; 16 & 17 Vict. c. 129); the *Mercantile Marine Act*, 1850 (13 & 14 Vict. c. 93); the *Mercantile Marine Act Amendment Act* (14 & 15 Vict. c. 96); the *Steam Navigation Act*, 1851 (14 & 15 Vict. c. 79); the *Passengers' Act*, 1852 (15 & 16 Vict. c. 44); the *Customs' Consolidation Act*, 1853 (16 & 17 Vict. c. 107); the *Consolidation Register Act* (8 & 9 Vict. c. 89); the *Navigation Acts* (12 & 13 Vict. c. 29, and 16 & 17 Vict. c. 131), and the *Wreck and Salvage Consolidation Act* (9 & 10 Vict. c. 99).

The Author has availed himself of all the learning of the reports of the Admiralty Courts, and the Privy Council, and has not neglected foreign codes and ordinances, particularly those which are frequently referred to and quoted by Lord Tenterden, and has referred to the *Code de Commerce* and *Code Civil* in the notes. In order to bring these two standard works once more within the reach of ordinary undertakings,

and within the means of ordinary men, the learned Serjeant admits he has done some violence to them both. For instance, he has struck out from *Park* that part which relates to *fire insurance*; his object being to confine it to *marine insurance*. But in lieu thereof he has substituted new dissertations on *Steam Navigation*, the *Passengers' Act*, and the like.

The *declaration of war against Russia*, with proclamations and orders in council relating to the matter are added.

"If" (says the Author) "for this attempt to rescue from wreck these two standard works, my countrymen should think I deserve any salvage remuneration I wish now to make it known that the *Merchant Seaman's Fund* (one of the wisest and most humane of modern institutions) receives voluntary contributions, and as regards myself, that I am abundantly remunerated by the assurance that I have earned it."

BILLS OF EXCHANGE BILL.

TOWN AND COUNTRY ATTORNEYS.

WE suppose our learned contemporary, the *Law Times*, deems it politic to attempt, whenever an opportunity offers, to disunite the Profession and persuade the provincial attorneys that their interests are neglected by their London brethren. Now, 1st, it must be recollected that the Metropolitan and Provincial Law Association expressly represents the country solicitors, and indeed the London members of that society are a comparatively small minority; 2nd, That a large proportion of the great towns possess active and influential societies by whom the defect would be supplied if it existed; and, 3rdly. The whole provincial Profession is represented by their London agents, whose interests are intimately connected with the welfare of their clients. The revival of this often refuted charge of selfishness or neglect against the London attorneys, will no doubt fail in its object.

In our Number for the 17th of June, we corrected some extraordinary mistakes which appeared to have been made as to the law relating to public notaries,—it being supposed that the protests under the proposed Act must be made by London notaries; whereas, beyond ten miles from London, the Master of the Faculties at Doctors' Commons may empower any attorney to act as a notary.

But there seems to be another oversight in considering the effect of the Bill, for it offers an *additional* remedy, but does not

supersede the existing right of action in any of the Courts. 'Neither in towns where there are notaries, nor where there are none, will the holder of a dishonoured bill be compelled to resort to a notary. Any one may present it, and if it be not paid, the parties may be sued without regard to the proposed Act. The holder may avail himself of its provisions if he should think them beneficial; but, if not, his present remedy will remain unaltered. If there be no defence to the action, he can obtain judgment in eight days and execution in 16, and at no more expense than under the new summary provisions. We repeat, that the costs of noting, protesting, registering, obtaining a Judge's order, serving the order, with the fees paid and the professional charges thereon, cannot be less than on a writ of summons.

Then, instead of the whole business being brought to London, and the County Courts excluded, it is clear that, on bills and notes not exceeding 20*l.*, the holder may issue his plaint and obtain his judgment in the County Court, just as he does at present.

If this measure had been proposed before the extensive improvements effected under the Common Law Procedure Act, the suitors might have been materially benefited; but now we should not be surprised if, in the majority of bill transactions, the Act were to remain a dead letter, because the existing remedy is equally efficacious, speedy, and cheap.

We have not heard that the London attorneys are desirous of becoming notaries, and they are of course aware, that in order to take that office the statutes relating to the London notaries must be repealed and compensation granted.

TAXATION OF COSTS.

SOLICITOR'S CERTIFICATE OF PROPER MASTER.

By the 10th Order of 25th October, 1842, it was directed "That all references for the taxation of costs shall be made to the Taxing Master in rotation, or if there has been any former taxation of costs in the same cause or matter, then to the Taxing Master before whom such former taxation has taken place, either on a reference from the Court or upon the request of a Master in Ordinary."

By a recent arrangement, the registrars have adopted an amended form of order, whereby, instead of directing the reference "to the Taxing Master in rotation," or "to the Taxing

Master to whom the cause or matter stands referred," they will in future make the reference "to the proper Taxing Master," thus leaving it to the solicitor to carry his order into the office of the Master to whom it has been already referred, or to get it referred to the Master in rotation, as the case may be.

In consequence of this arrangement it will be necessary for the solicitor when he brings an order to the sitting Master for a reference to certify, in the form undermentioned, that the cause or matter has not been already referred.

A. B. v. C. D.

or

In the matter of

I hereby certify that this cause [or matter] has not been referred to any Taxing Master.

Dated

183 .

E. F.

Plaintiff's solicitor.

POINTS IN COMMON LAW PRACTICE.

REFERENCE BACK OF AWARD.—WHEN APPLICATION TOO LATE.

AN action was referred by Judge's order on July 17, 1847, with power of reference back to the arbitrator, and the award was made in July, 1848, and the order of reference made a rule of Court in February, 1849. A rule was obtained in Michaelmas Term, 1849, on the defendant to pay the costs which had been taxed, but in January, 1850, the rule was discharged on the ground that the award was bad.

A motion, made on April 22, 1853, to remit to the arbitrator the matters referred, was held too late—the affidavits giving no explanation of the cause of the delay. *Doe dem. Mayo v. Cannell*, 1 Lowndes & M. 161.

DIRECTION IN AWARD AS TO PAYMENT OF COSTS OF REFERENCE AND AWARD.

By an agreement between Mary Young, James Bulman, and John Dennison, they agreed to refer certain matters in dispute to arbitration, and that "the costs of the said reference, and of the award to be made in pursuance thereof, including a reasonable compensation to the said arbitrators for their trouble, shall be in the discretion of the said arbitrators or any two of them; who shall by their award order and direct by whom, and to whom, and in what proportions and manner the same shall be paid." The award disposed

of the several matters in difference, and then directed that "the said Mary Young, James Bulman, and John Dennison, respectively pay for the attendance of his and her own witnesses; and that the other costs of the said reference and of this our award, and also the compensation of the arbitrators, be paid by the said Mary Young, James Bulman, and John Dennison, in equal proportions." On a rule to set aside the award on the ground that there was no direction as to the time, place, manner, or person to whom the costs were to be paid, *Jervis, C. J.*, said, "The arbitrators have sufficiently explained that the costs are to be paid by the three parties in equal proportions,—which means that each shall pay one-third to them the arbitrators, or either of them;" and the rule was refused. *In re Young & Bulman*, 13 Com. B. 623.

POINTS IN EQUITY PRACTICE.

COVENANT FOR PRODUCTION OF DEEDS BY MORTGAGEES ON DECREE FOR RECONVEYANCE.

MORTGAGEES in possession of an estate were ordered (upon part of the debt being satisfied) to re-convey to the plaintiffs one undivided moiety of the property, which formed part of a larger estate held under the same title-deeds, to which such mortgagees were entitled in fee. The Vice-Chancellor *Stuart* (after a reference to the conveyancing counsel) held that the plaintiffs were entitled to a covenant from the defendants for the production of the deeds which they retained as owners in fee of the other lands. *Yates v. Plumbe*, 2 Smale & G. 174.

EVIDENCE.—ONUS OF PROVING CONSIDERATION OF POST-NUPTIAL SETTLEMENT AS AGAINST PURCHASER.

Held, that the statement in a post-nuptial settlement, that it had been made "in consideration of 5*s.* and divers other good and valuable considerations," without naming them, did not of itself amount to evidence that the settlement was not voluntary so as to throw on the defendant, who claimed against it as a purchaser for valuable consideration, the onus of avoiding the deed. The case of *Gully v. Bishop of Exeter*, 2 Moo. & P. 266, was cited in the judgment. *Kelson v. Kelson*, 10 Hare, 385.

ANNUAL MEETING OF THE INCORPORATED LAW SOCIETY.

THE Annual General Meeting of the members was held in the Hall of the Society in Chancery Lane, on Tuesday last, the 27th instant. Mr. Kinderley, President, in the Chair.

The following gentlemen were re-elected as members of the Council:—

Benjamin Anstey,	E. Rowland Pickering,
Keith Barnes,	John Jas. Jos. Sudlow,
John Coverdale,	William Williams,
James Leman,	John Young.
Wm. Henry Palmer,	

Mr. William Stephens of Bedford Row, was elected a member of the Council in lieu of Mr. Augustus Warren, deceased; Mr. Bartle J. L. Frere, in lieu of Mr. Rd. Harrison; and Mr. Alfred Bell, in lieu of Mr. Samuel Amory, resigned.

Mr. John James Joseph Sudlow was elected President, and Mr. Keith Barnes, Vice-President of the Society for the ensuing year.

Mr. Edwin Ward Scadding, Mr. John Marmaduke Teesdale, and Mr. Richard Minshull Jones, were elected auditors of the accounts of the Society.

The annual report of the Council was then read, and ordered to be printed. We shall take an early opportunity of submitting it *in extenso* to our readers.

The report of the auditors was also read and approved.

The following motion for altering the 65th bye-law, was carried:—

"That the 65th bye-law relating to the exclusion of members for misconduct be repealed, and that the following bye-law be substituted in lieu thereof:—

"If any member shall, in the opinion of the Council, be guilty of any act which renders him unfit to remain a member of the Society; or if a requisition in writing, signed by three or more members of the Society, not being members of the Council, shall be presented to the Council, stating ground of complaint against a member of the Society, a copy of the resolution of the Council on the subject or a copy of the requisition, as the case may be, shall be sent to such member; and at least 10 days' notice shall at the same time be given to him of a meeting of the Council fixed for the consideration of the subject, at which meeting such member shall be heard, if he think proper, thereon. And, in case the Council shall thereupon be of opinion that such member ought to be excluded from the Society, they shall report their opinion thereon to a general or special general meeting of the Society; and they shall in the notice convening such meeting state the fact of a resolution of the Council having been come to on the subject, or a requisition presented, as the case may be; and such member shall be liable by the order and resolution of such meeting of the Society to be excluded from the Society, and immediately thereupon he shall cease to be a member thereof. But no

order shall be made at any such meeting of the Society for the exclusion of any member of the Society unless 50 members at least shall be present at the time appointed for the chair to be taken at such meeting, or within half an hour afterwards."

The thanks of the meeting were voted to the President in particular, and the Council in general, for their continued attention to the interests of the Profession and the affairs of the Society.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

ANNUAL REPORT OF THE COMMITTEE OF MANAGEMENT.

April 29th, 1854.

[Continued from page 144, ante.]

Removals of the Courts from Westminster.—The advantages that would accrue from a removal of all the Courts from Westminster and Guildhall to the immediate vicinity of the Inns of Court, is one of those subjects which has long been agreed upon by all parties; the only question being, how and when the alteration should take place. The subject has recently been upon more than one occasion publicly noticed, and the Committee, having reason to believe that there was some chance of expediting the movement, have presented a petition upon the subject to both Houses of Parliament. At the request of a large number of the Profession, the Lord Chancellor has already directed that the sittings of the Equity Courts shall continue during the next two Terms to be held at Lincoln's Inn, notwithstanding the sitting of Parliament, which has hitherto been always considered a sufficient reason for holding them at Westminster. An objection to the movement has been raised on the ground that it is an advantage to both branches of our jurisprudence, that the Equity and Common Law Courts should be held in the same locality, so as to give an opportunity to the respective practitioners to communicate with each other. Certainly, so far as attorneys and solicitors are concerned, the more closely all the Courts are brought together, the more convenient it will be for the transaction of business. And in this way, not only is the business actually transacted in Court facilitated, but also that much larger portion which is disposed of by solicitors in their own offices. The Committee, therefore, trust that this argument will be allowed its due weight, not for the purpose of restoring the Equity Courts to Westminster Hall, but for that of bringing the Common Law Courts also to some common centre in the neighbourhood of Lincoln's Inn.

Chancery affidavits.—In the last circular the Committee explained the nature of the Oaths in Chancery Acts of last Session. The Act has now been brought into full operation, and

it has been a very great convenience both to the public and to the Profession. The Chancellor has freely appointed as Commissioners those who have complied with the regulations, which are as follows:—

"Any solicitor desiring to be appointed a London Commissioner to administer Oaths in Chancery is required to lodge with the Lord Chancellor's Secretary a petition fairly written on foolscap paper, praying to be so appointed.

"Every such petition must state the following particulars; i. e.—

- "1. That the applicant has practised as a solicitor for ten years, and that his place of business is within ten miles of Lincoln's Inn Hall.
- "2. The parish and (where practicable) the street and number of the house in which he has carried on his business for the last three years.
- "3. The names of his partners (if any), or (if such be the case) that he has no partner.

"Every such petition must be accompanied by a certificate signed by two solicitors (whose names, additions, and addresses must be given), who shall state that they are themselves solicitors of ten years' practice, and that the applicant is known to them, and is a solicitor of respectability.

"The accustomed certificate signed by two barristers will, in addition, be required.

"Twenty-one days' notice of every such application shall be given to the Registrar of Solicitors, to be submitted to the Council of the Incorporated Law Society of the United Kingdom."

It appears, also, that the liberal interpretation of the Act, not confining the power to administer the oath to the place of business of the Commissioner, has been finally adopted.

Equity.—Previous to the end of last Session the Committee presented a petition praying for the adoption of a further measure of Equity Reform, in the total abolition of the office of the Accountant-General, the whole of whose business could be transferred to the Bank of England, where it would be transacted with greater convenience to the suitors, and very much more economically. The whole of this subject, the Committee were informed, was under the consideration of her Majesty's Government, who, however, it appears did not think it right to take any active steps upon it, in consequence of Lord St. Leonards having himself brought in the Chancery Suitors' Further Relief Bill. This Bill, which afterwards became the Act 16 & 17 Vict. c. 98, made one or two decided, though small, improvements, but entirely failed to adopt the principle, which your Committee are of opinion is the only sound one, of doing away with the Office of the Accountant-General altogether.

Trust Societies.—It will probably be recollected that the South Sea Company endeavoured last Session to get an Act passed to enable them to wind up their old affairs, and then to turn the company into a new society for executing private trusts. The Bill at that time failed, but it has been again introduced into the House this Session, and an application has also been made for an Act by an entirely separate joint-stock company, to be called the Executor and Trustee Society.

The object of these Bills is substantially the same, so far as it affects the Profession. It is to enable joint-stock companies to trade in trusts, and thus, for the benefit of the shareholders, to abrogate the rule of Equity which prevents trustees from receiving remuneration for the performance of their duties. Your Committee are of opinion that if such a change in the Law is desirable, it ought not to be introduced thus indirectly for the benefit of a joint-stock company, but should be brought forward by Government as a public measure of Law Reform.

Your Committee are also of opinion that these Bills are open to other and very serious objections, especially inasmuch as the directors will have to manage the affairs of the body of *cœtui que trusts* for the benefit of a distinct body—namely, the shareholders; and as the more successful they are in the management of the trusts, the less they will have to do; and as the less they have to do the smaller will be their dividend, it is clear that their duties to these two bodies must necessarily clash. It is also worthy of remark, that these companies must have an unlimited power of holding land, which has hitherto been always withheld from companies, and which, if they were to obtain any very great amount of success, might lead to very inconvenient consequences.

Registration of Titles.—Another attempt was made last year to pass an Act for the Registration of Title Deeds, and a Bill almost identical with Lord Campbell's Bill of 1851 was introduced by the present Lord Chancellor. It was referred to a Select Committee in the Lords, and without any very material alterations, passed by them and sent to the Commons. In the Commons it was also referred to a Select Committee, before whom two members of your Committee were examined at great length; and your Committee believe they are justified in saying, that it was, in a great measure, in consequence of the evidence so given, that the Select Committee reported against the Bill, and recommended that the whole subject should be further investigated, with a view to test the practicability of the plan for the registration of legal estates, which has been before referred to by your Committee, and which they are convinced, if any registration at all is adopted, is the only one that could be carried out in a country possessing such a complicated law of real property as that of our Courts.

In accordance with the suggestion of the Select Committee of the House of Commons, a Royal Commission has been appointed, to consider and report upon the subject of the registration of title, with reference to the sale and transfer of land.

The Commissioners are Mr. H. S. Walpole, M.P., Q.C., Mr. J. Napier, M.P., Q.C., Sir A. J. Cockburn, M.P., A.G., Sir R. Bethell, M.P., S.G., T. E. Headlam, Esq., M.P., Q.C., V. Scully, Esq., M.P., Q.C., R. Lowe, Esq., M.P., W. D. Lewis, Esq., H. Drummond, Esq., M.P., J. E. Denison, Esq., M.P., R. Wilson, Esq., and W. S. Cookson, Esq.

The Committee consider the appointment of this Commission a subject of congratulation upon several accounts. In the first place, they feel sure that the subject will now for the first time be considered in connexion with all those points of practical detail which are only to be met with in the daily routine of a solicitor's office, and which cannot have their full effect, if the Commissioners are only acquainted with them as mixed up in the voluminous evidence which is brought before them in the course of their inquiries. In the next place, the appointment of Mr. Wilson and Mr. Cookson as Commissioners is not only a well-merited honour to those gentlemen, but one, also, to the whole Profession. The constitution of the Commission proceeds upon a precedent which has of late been too much disregarded, and will ensure that, to whatever extent the interests of the Legal Profession come legitimately before the Commission, they will be considered with a due regard to each branch of the Profession.

Stamps on leases.—Soon after the passing of the last Stamp Act, a question arose as to what was the proper stamp for a lease reserving a peppercorn rent. It is clear that the spirit, and, as your Committee believe, also the words of the Act, would justify only the sixpenny stamp, treating the peppercorn as a rent less than 5*l*. The Commissioners, however, have decided that such leases are subject to the common deed-stamp of 35*s*. Your Committee endeavoured to procure the insertion of a clause remedying this anomaly in the short Stamp Act which was passed last year. They were not, however, successful in the attempt, which they will therefore renew as soon as any Bill is before the House which will give them the opportunity of raising the question.

Bankruptcy.—The Bankruptcy Bill, which was last year brought into the House of Lords by Lord St. Leonards, and against several clauses of which your Committee petitioned, was not reported from the Select Committee; and in consequence of the numerous schemes which had been brought before Parliament, and which included, on the one hand, the abolition of the District Courts altogether, and the transfer of the bankruptcy business to the County Courts, and on the other hand, the addition to the existing bankruptcy jurisdiction

of the administration of the estates of all deceased traders, whether insolvent or not, it was thought better that the whole of this subject, too, should be referred to a Royal Commission, and one has been accordingly appointed, consisting of the following gentlemen:—Mr. H. S. Walpole, M.P., Q.C., Sir George Rose, Mr. Swanston, Q.C., Mr. Commissioner Hill, Mr. Bacon, Q.C., Mr. Commissioner Holroyd, Mr. (now Mr. Commissioner) Cooke, and Mr. Glyn. These gentlemen have circulated a series of printed questions amongst those parties who have had the greatest experience upon the subject; a large number of replies have been sent in, and amongst them a paper prepared by your Committee, and it is hoped that the Commissioners will be enabled to prepare a scheme of Bankruptcy Law which will be more satisfactory, and therefore more enduring in its character, than any of the numerous phases which the existing system has passed through.

In framing their replies, your Committee have adhered to the principles which have ever guided the operations of the Association, and have insisted that the expense of the public Courts of Justice ought to be borne by the public revenue; inasmuch as the benefits of the administration of justice are enjoyed with fewer drawbacks by those who are not compelled to resort to its tribunals, than by those who find themselves obliged to become suitors; that, therefore, all Court fees ought to be abolished; and that in this way alone can the Courts of Justice be made, as they ought to be, equally accessible to all classes of the community. They have also contended that those who are compelled to appeal to the Courts ought to be able to do so easily, and to the exact extent that they themselves desire, and that they ought to be able to obtain a judicial decision of any question of law or fact, without, for that purpose necessarily subjecting the entire estate, out of which the question arose, to be administered in and by the Court.

Your Committee believe that the adoption of this principle of partial relief, as it is called in the Act for the Improvement of the Jurisdiction in Equity, the 15 & 16 Vict. c. 86, which introduced it into the Court of Chancery, is a matter of very great importance.

Your Committee have made a number of other suggestions, all designed to carry out the principle, that the public ought to be left as free as possible to adopt, under the guidance of their professional advisers, such means and methods of winding up insolvent estates as experience may tell them are best for all parties—all parties being at the same time enabled to apply to the Courts for aid, when they may deem it requisite, to obtain judicial determination of disputed questions, judicial control over hostile parties, or judicial punishment for fraudulent or criminal conduct.

Ecclesiastical.—The time has at length arrived when the Ecclesiastical Courts are evidently to receive, in their turn, great alterations,

and, it may be hoped, also great improvements. The Commission which was appointed last year, and noticed in the last annual report, have prepared a Bill for transferring to the Court of Chancery the testamentary jurisdiction of the Ecclesiastical Courts, and for altering and amending the Law in relation to matters of Testacy and Intestacy. This Bill has been introduced into the House of Lords by the Lord Chancellor; and after having been submitted to the scrutiny of a Select Committee of that House, by which it has been somewhat modified, it has been passed and sent to the Commons.

[To be continued.]

UNITED LAW CLERKS' SOCIETY.

TWENTY-SECOND ANNUAL REPORT OF THE COMMITTEE OF MANAGEMENT.

THE principal objects of this Society are to establish, by the subscriptions of the Members and the donations of the Profession,—

1st. A General Benefit Fund, for rendering liberal pecuniary assistance in the events of sickness; inability through age or other infirmity to earn the means of subsistence; and on the death of a member, or a member's wife.

2nd. A Casual Fund, to afford assistance by gift to law clerks, whether members or not, their widows and families when in temporary distress.

3rd. The Society also seeks to provide the Profession with efficient and respectable clerks; and,

4th. The formation by gift and purchase of a library of useful legal and other works.

Subject to certain necessary restrictions, all law clerks are eligible for membership.

The Committee have much pleasure in presenting to the donors and members a report of their proceedings during the past year.

The first branch of the Society's expenditure consists of the relief it affords to its members when disabled by illness. Nineteen members have claimed this relief during the past year, and each received weekly an allowance of one guinea, so long as he was unable to follow his employment. Three other members, whose illness has assumed a permanent character, and who had received one guinea weekly for 12 months, have been, and still are, in receipt of half that amount, which the rules allow, until the completion of a second year, when, if permanent disability ensues, these members will be placed on the superannuation fund. Including payments in the preceding year, these three members have already received in their present illness, one 53*l.* 11*s.*, another 58*l.* 5*s.* 6*d.*, and the other 73*l.* 10*s.* In meeting these claims the Society has expended during the past year 188*l.* 1*s.*, making the total expenditure on account of sickness 3,228*l.* 9*s.*

The next branch of the Society's expenditure consists of relief afforded to its members for life when permanently disabled through age or other infirmity. At the last anniversary there were four members thus afflicted—there are now five—three receive in weekly payments 31*l.* 4*s.* a year, and the other two 36*l.* 8*s.* These payments require an annual expenditure of 166*l.* 8*s.* Not one of these five superannuated members is disabled by old age. Disease of the mind is the cause in each case—three are afflicted with entire loss of intellect.

The last branch of expenditure out of the general fund consists of an allowance of 50*l.* on the death of every member, and one-half that sum on the death of a member's wife should he survive her. The Committee have the pleasure of stating that out of 594 members not one death occurred during the past year, and only one amongst the members' wives. When the age of the Society, the number of members, their occupation, and general position are remembered, this fact must be considered a very gratifying one. In meeting claims which arose before the commencement of the present year and the claim already mentioned, 175*l.* have been expended, making a total of 4,617*l.* 10*s.* paid on account of death alone.

The Committee gratefully acknowledge the accession of several new Donors since the last Anniversary, and especially the receipt of a third donation of thirty guineas from the Benchers of Lincoln's Inn, making a sum of 90 guineas contributed to the funds by that learned society. The Committee have also to report the bequest of a legacy of 100*l.* by the late Mr. Nicholson, of Furnival's Inn, but it is a contingent one, and cannot be receivable for some years.

In testimony of the opinion entertained by the Profession of the usefulness of the Society, and also of their willingness to help those who help themselves, it may be mentioned that a firm of large practice, having witnessed the distressed condition of the family of one of their clerks, who had made no provision for a time of affliction, determined that the assistance afforded by them in future should be confined to those clerks who were members of this Society, which resulted in most of the clerks becoming so,—seven joined the Society in one evening immediately afterwards.

The Committee report with pleasure that, notwithstanding the loss of members by emigration, removal from the Profession, and other causes, the number on the 20th day of May last, was 529, whose contributions during the year exceeded 1,100*l.*

The Committee are happy to say, that after discharging every claim, they have been able to make some addition to the Society's investments. On the 4th April, 1853, the General Benefit Fund amounted to 15,660*l.* 8*s.*; since then 2,015*l.* 3*s.* 7*d.* have been received. The year's expenditure, including subscriptions returned to members who have gone abroad, has

amounted to 7811*l.* 6*s.* 7*d.*; the difference has been carried to the Society's investments, which have been increased from 15,807*l.* 13*s.* 1*d.* on the 20th of May, 1853, to 16,818*l.* 10*s.* 3*d.* on the 20th of May, 1854. The Committee have always kept in mind the necessity of husbanding and increasing this capital, so apparent when it is remembered that if the number of superannuated members were only increased threefold, or two per cent., the whole interest would be consumed in paying their weekly allowances. These investments are made with the Commissioners for the Reduction of the National Debt, and the Committee regret to state that a considerable reduction of interest has lately taken place on funds invested with them.

The Casual or Benevolent Fund is formed by the donations of the Profession and a subscription from every member. This fund is employed in assisting with small gifts of money, not exceeding 5*l.*, all law clerks, whether members or not, their widows and families, when suffering from distress not the result of misconduct. The chief participants in this fund are non-members and their widows, and the widows and orphan children of members. Before any relief is granted, the applicant's character and circumstances are carefully investigated, and if the case be found one deserving of relief it immediately receives it,—if undeserving none is afforded. During the year, 55 applications have been received; 39 were those of deserving persons, and relieved accordingly; the rest could not be entertained, being ineligible from various causes. Out of the same fund several small loans have been granted to members who needed temporary pecuniary assistance. The power to grant these loans works beneficially, they are of service to the members and of advantage to the Society—considerably lessening the number of claimants on the Sickness Fund. Very many members regard the Superannuation Fund as the great object of their contributions, and in illness prefer receiving assistance by way of loan to declaring on the Sickness Fund, because it would, to some extent, lessen the amount of the Society's savings, on the interest of which they believe the Society must ultimately rely for the payment of the relief afforded to its aged and infirm members. These loans are made without interest or charge of any kind. The relief afforded out of this fund during the year has amounted to 381*l.*, and its total expenditure has reached the sum of 4,872*l.* 16*s.*

The balance in hand of the Casual Fund in April, 1853, amounted to 60*l.* 10*s.* 5*d.* The receipts of the year have been 360*l.* 13*s.* 1*d.* and the expenditure 381*l.* 17*s.*, leaving in hand a balance of 39*l.* 6*s.* 6*d.* only.

The Committee hope that their report of the Society's operations during the past year will prove satisfactory to the donors and members. The claims of the latter have all been promptly and fully satisfied, and some provision has been made for the heavier claims of future years. The Committee return to the Profes-

sion their sincere thanks for the kind support the Society has received during a period of 22 years, that support, among other advantages has given a more liberal character to its benefits, and placed them within the reach of many who could not otherwise have obtained them—it also enables the Society to afford assistance to those who are not members and to their families, and the Committee respectfully hope that those benefits may never be in any way curtailed by the withdrawal of that support which has been the main cause of the Society's favourable progress and of its present flourishing condition.

Freemasons' Tavern, June 22, 1854.

NOTES OF THE WEEK.

SITTINGS OF LORD JUSTICES.

THE Lords Justices having to attend at the Judicial Committee of the Privy Council, will

not sit again in their own Court before the 6th July, on which day they intend to hear Motions, and on the day following Petitions in Lunacy.

LAW PROMOTIONS.

The Queen has been pleased to give orders for the appointment of *William H. Draper, Esq.*, one of the Puisne Judges of Canada West, to be an Ordinary Member of the Civil Division of the Third Class, or Companions, of the most honourable Order of the Bath.—From the *London Gazette* of June 23.

The Queen has been pleased to appoint the Right Honourable John Hatchell, one of the Commissioners of Charitable Donations and Bequests for Ireland.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lords Justices.

Chaffers v. Baker. June 15, 1854.

MOTION TO TAKE BILL PRO CONFESSO.—NOTICE OF.

An order was made to take a bill pro confesso under Order 79 of May 8, 1845, although the notice of motion named a day in Term not specially set apart for motions.

THIS was a motion by direction of Vice-Chancellor Kindersley to take this bill pro confesso under order 79 of May 8, 1845. It appeared that in the notice of motion a day in Term had been named which was not specially set apart for motions.

C. Purton Cooper in support.

THE Lords Justices said, that a motion could be made on any day in Term, although it was not the practice to hear motions which were opposed except on the days specially appointed. The order would therefore be made as asked.

Vice-Chancellor Kindersley.

Marryatt v. Marryatt. June 26, 1854.

PAYMENT INTO COURT OF STOCK BY TRUSTEES IN ADMINISTRATION SUIT.

An order was made on motion in an administration suit by the executor of a residuary legatee against the trustees of the testator's will to transfer into Court certain stock, although certain other parties interested were not before the Court.

THIS was a motion for the payment into Court of certain moneys and stock by the trustees of the will of the testator, Mr. Joseph Marryatt, in this suit for the administration of his estate, and which was instituted by the executor of a residuary legatee.

Baily and *Batten* in support; *Glasse* and *Hetherington*, contra, on the ground that the other parties interested were not before the Court.

THE Vice-Chancellor said, that by the new practice *cestuis que trustent* need not be served with notice of a motion like the present, as the trustees represented them. In accordance with the decision of Vice-Chancellor Wigram in *Bartlett v. Bartlett*, 4 Hare, 631, the sums of stock must be transferred into Court, but no order would be made as to the sums of money, which were subject to be dealt with under the will.

Wellesley v. Mornington. June 27, 1854.

INJUNCTION TO RESTRAIN SALE BY TRUSTEES UNDER POWER.

An injunction was refused to restrain the sale under a power of certain estates held in trust to pay off incumbrances and annuities, on the ground that the trustees were not competent to conduct the sale, one being a bankrupt and the other of an advanced age, where no intention to misapply the proceeds was suggested.

THIS was a motion for an injunction to restrain the sale under a power of certain estates, which were held by two trustees in trust to pay off incumbrances and certain annuities. It appeared that one of the trustees was bankrupt and the other was 90 years of age, and that Lord Mornington and Lord Wellesley, who had the power of appointing new trustees, could not agree.

Rolt and *Freeling* for Lady Mornington, an annuitant, in support, on the ground that the present trustees were not fit persons to conduct the sale.

Baily and *Selwyn* for Lord Wellesley; *Druce* for Lord Mornington, contra.

THE Vice-Chancellor said, that as there was no suggestion of any intention to misapply the proceeds, or that the sale was improper, the injunction must be refused.

Vice-Chancellor Stuart.

Freeland v. Stansfield. April 25; June 27, 1854.

PARTNERSHIP. — DISSOLUTION BY BANKRUPTCY. — RETURN OF PART OF PREMIUM.

*A partnership for seven years between the plaintiff and the defendant as general practitioners in medicine, in consideration of 900*l.*, was dissolved by the bankruptcy of the defendant: Held, that the plaintiff was entitled, in taking the accounts of the partnership, to be credited with a portion of the premium proportionate to the period of the term unexpired.*

It appeared that the plaintiff had, by deed dated Jan. 1, 1850, entered into partnership with Mr. Edward Leech as general practitioners in medicine at Chichester, for a period of seven years, paying a consideration of 900*l.*, and that they had continued to carry on the business until June, 1851, when Mr. Leech became bankrupt. This bill was thereupon filed against his assignees to recover a proportionate part of the premium as on a failure of consideration, and for an account and a receiver.

Wigram and G. M. Giffard for the plaintiff; *Makins and H. Stevens* for the defendants.

The Vice-Chancellor said, that as there was a failure of consideration, the plaintiff was entitled to have a portion of the premium returned proportionate to the period of the partnership which was unexpired at the time of the bankruptcy, and in taking the accounts would be allowed out of the assets credit for the same.

Vice-Chancellor Wood.

Daniel v. Fussell. June 27, 1854.

INJUNCTION TO RESTRAIN SALE UNDER POWER IN MORTGAGE. — STATUTES OF USURY.

*The defendant agreed to lend the plaintiff a sum of 15,000*l.* within three years, in certain sums as thereby provided, and the plaintiff agreed to pay 1 per cent. on the whole 15,000*l.* from the date of the agreement to the expiration of the three years, whatever sum should be advanced, and 4i. per cent. on the sums advanced. A sum of 4,000*l.* was advanced on the security of a mortgage of land with a power of sale: Held, that the plaintiff was not entitled to an injunction to restrain an action brought to recover the first year's per centage of 1 per cent., nor to restrain a sale under the power on the ground the agreement was void under the Statutes of Usury.*

By a deed, dated in February, 1853, the defendant agreed to lend to the plaintiff the sum of 15,000*l.* within three years, in certain sums as therein provided, and the plaintiff agreed to pay 1 per cent. on the whole 15,000*l.* from the date of the agreement to the expiration of the three years, whatever sum should be advanced, and 4i. per cent. on the sums advanced. The plaintiff gave a mortgage with a power of sale

of certain lands at Wimbledon as a security for 4,000*l.* which was advanced in March, 1853, but the plaintiff complained of the application of certain portions of this amount in respect of costs and interest. The defendant had brought an action to recover the 1i. per cent. due on the 15,000*l.* for the first year, and the plaintiff filed his bill for an injunction to stay such action and the sale of the mortgaged estate, and for an account and a declaration that the agreement was void under the Usury Acts.

Moxon now moved for the injunction; *Roll, J. Williams, and Cairns*, contra.

The Vice-Chancellor said, that the injunction must be refused, with costs.

Court of Queen's Bench.

Ex parte Done. June 5, 1854.

ARTICLES OF CLERKSHIP. — ENROLMENT IN COUNTY PALATINE COURT NUNC PRO TUNC.

Articles of clerkship were duly registered in this Court, but not in the Lancaster County Palatine Court. A motion was granted for leave to enrol them nunc pro tunc in the Palatine Court, and that the service should reckon from their date, in order to the clerk's admission in the Palatine Court.

THIS was a motion under the 7 & 8 Vict. c. 86, s. 3, for an order directing the Prothonotary of the Court of Common Pleas at Lancaster to enrol *nunc pro tunc* the articles of clerkship of the above John Done, jun., dated June 3, 1847, whereby he became bound to Mr. Charles Gibson, of Manchester, an attorney, for the term of five years, and that the service under such contract should be directed to commence and be computed from their execution, with a view to his admission in the Court of Common Pleas of Lancaster, notwithstanding he had omitted to register the same in the County Palatine Court. Notice of this application had been given to the Incorporated Law Society, who did not oppose. The articles had been registered with the proper officer in this Court on June 7, 1847, pursuant to the 6 & 7 Vict. c. 73, and it appeared they were not registered in the Court of Common Pleas at Lancaster, because the applicant believed that it was only necessary the articles should be registered in London.

Woollett in support.

The Court granted the motion.

Regina (ex parte Piddlesden) v. Overseers of Withyham, Sussex. June 8, 1854.

MANDAMUS. — CERTIFICATE OF OVERSEERS UNDER 3 & 4 VICT. C. 61.

*A rule was made absolute on the overseers of a parish to inquire and certify under the 3 & 4 Vict. c. 61, s. 5, whether the applicant was sole occupier of a house of the yearly value of 10*l.* for the purpose of obtaining a license to keep a beer-shop.*

THIS was a rule nisi obtained on May 26 last, for a mandamus on the overseers of

Withyham, Sussex, to sign a certificate under the 3 & 4 Vict. c. 61, that the applicant was the sole occupier of a house of the yearly value of 11*l.*, for the purpose of obtaining a licence to keep a beer-shop.

By s. 5 it is enacted, that "every overseer of the poor who shall refuse to grant a certificate of the rating or assessment of any rated house and premises, when demanded, or of any person having claimed to be rated in respect of any newly erected house not yet rated," &c., "shall forfeit 20*l.*"

Foot showed cause against the rule, which was supported by *Archbold*.

The Court said, that the rule would be made absolute on the overseers to inquire and certify if the applicant was duly qualified.

Edwards v. Trevelly. June 23, 1854.

ACTION BY SEAMAN FOR WAGES.—DESERTION.—REPLICATION.

The replication to an action by a seaman to recover wages due, and to which the defendant pleaded the forfeiture of such wages, under the 7 & 8 Vict. c. 112, s. 9, for desertion, alleged that the captain had flogged him with unnecessary and unreasonable cruelty and severity, and a refusal to desist therefrom on request, and that having reasonable grounds to believe it would be continued, he had left the ship: Held, good, and that the plaintiff's departure from the ship did not amount to a desertion. A further replication, stating that the plaintiff was an African negro, and a threat by the captain to sell him, was held bad, where it did not show that the place at which the desertion took place was one where the threat could be carried into effect.

THIS was an action to recover the amount of wages due to the plaintiff, as a seaman, to which the defendant pleaded the forfeiture of such wages, under the 7 & 8 Vict. c. 112, s. 9, for desertion. The plaintiff replied, that while on board the ship the captain had flogged him with unnecessary and unreasonable cruelty and severity, that he had requested the captain on the arrival at San Francisco to desist therefrom, but that the captain had refused, and that having reasonable grounds to believe the flogging would be continued, he had, in order to escape therefrom, left the ship. He further replied, that he was an African negro, that negroes were bought and sold in divers of the United States of America, that the captain had threatened to sell him as a slave, that San Francisco was situated in one of such States, and that having reasonable ground to believe that, on arriving at San Francisco, the captain would carry his threat into execution, he had left the ship to avoid being so sold.

Willes appeared in support of a demurrer to these replications; *Prestice*, contra.

The Court said, that the second replication was insufficient, in not showing the place where the threat was to take effect was a slave State,

and therefore, where it could be of consequence or injury to the plaintiff. As to the other replication, it stated facts showing the plaintiff's departure from the ship was not what amounted in law to a desertion, and the plaintiff was therefore entitled to judgment.

Mayhew v. Suttle. June 23, 25, 1854.

ACTION FOR EJECTING PLAINTIFF FROM BEER-SHOP WITHOUT NOTICE.—CONSTRUCTION OF AGREEMENT.

The plaintiff was placed by the defendant, a brewer, in charge of a public-house, under an agreement that he should enter and carry on the business on the same terms as those on which the previous occupier carried it on, with a proviso for the determination of the agreement upon a month's notice, and the plaintiff agreed to take all his beer from the defendant at a certain price, and not to part with the occupation without the defendant's consent, and also to deliver up possession on the determination of the agreement: Held, that the plaintiff was only a servant of the defendant, and had no interest in the premises, and could not recover in an action against the defendant for breaking and entering into the house, although he was ejected without notice.

THIS was an action to recover damages from the defendant for breaking into and entering the house of the plaintiff, who had been placed by the defendant, a brewer at Bury St. Edmunds, in charge of a public-house at Ipswich, upon the terms contained in an agreement dated Sept. 21, 1852, whereby the defendant agreed that the plaintiff should enter into and upon the premises and carry on the business on the same terms as those on which the previous occupier carried it on, with a proviso for the determination of the agreement upon a month's notice, and the plaintiff agreed to take all his beer at a certain price (which was calculated at a price more than usual) from the defendant, and not to part with the occupation of the premises without the defendant's consent, and also to deliver up the premises to the defendant on the determination of the agreement by a month's notice. The defendant had ejected the plaintiff without notice.

Field appeared in support of a demurrer to the plaintiff's surrejoinder; *D. D. Keane*, contra.

Curr. ad. vult.

The Court said, that the plaintiff could only be regarded under the agreement as a servant, and had therefore no interest in the premises as against the defendant, who was accordingly entitled to judgment.

Court of Exchequer.

Stevens v. Midland Railway Company and Lander. June 22, 1854.

ACTION AGAINST RAILWAY COMPANY FOR MALICIOUS PROSECUTION.—LIABILITY OF SERVANT.

Held, that a railway company is not liable in an action to recover damages for a malicious prosecution of a plaintiff, on the charge of feloniously receiving stolen goods.

The superintendent was also made a defendant, and there was evidence of the presence of express malice and the want of reasonable and probable cause for the charge made: Held, that he was liable, although he was the servant of the railway company.

THIS was an action against the above railway company and their superintendent at Derby, to recover damages for a malicious prosecution of the plaintiff on the charge of having feloniously received a tarpaulin which had been stolen from them. On the trial before Mr. Russell Gurney, Q. C., at the last Gloucester Assizes, the plaintiff obtained a verdict with 100*l.* damages, and this rule had been obtained on April 22 last, to enter it for the defendants or for a new trial, on the ground of misdirection, the only question left to the jury being, whether there was malice and want of reasonable and probable cause, and that the superintendent acted as the servant of the railway company.

Whateley and Gray showed cause against the rule, which was supported by *Keating, Huddleston, and Powell.*

The Court said, that the rule must be absolute to enter the verdict for the railway company, on the ground that as a corporation they could not be actuated by a malicious motive, and also that there was no evidences to connect them with the affair. The rule as to *Lauder* would be made absolute, as there was abundant evidence of the presence of express malice and the want of reasonable and probable cause for the charge.

Pierce v. Williams. June 23, 1854.

ACTION BY PRINCIPAL AGAINST SURETY ON GUARANTEE TO RECOVER PAYMENTS THEREUNDER.—COSTS.

The plaintiff with another person became surety for the defendant on his opening an account with a bank, and it appeared that the bank officer had frequently requested the defendant to reduce his account: Held, that the request was a sufficient demand on the principal to support an action against the surety on default.

The plaintiff on being sued suffered judgment to go by default: held, that he was only entitled to recover from the defendant the costs of the writ, and not of the judgment and execution; and a rule was made absolute to reduce the damages by their amount, in an action to recover from the defendant the payments made by the plaintiff under the guarantee.

THIS was a rule nisi to enter a nonsuit or to reduce the damages in this action, which was brought by the plaintiff, who had become surety with another person in 100*l.* for the de-

fendant, upon his opening an account with the National and Provincial Bank of England. It appeared that the bank had issued a writ against the plaintiff, upon the defendant becoming their debtor, and going to reside elsewhere, and judgment passed by default, under which the plaintiff paid 50*l.* as his share of the guarantee, and 23*l.* odd for costs. On the trial before *Williams, J.*, at the last Beaumaris assizes, the bank officer proved that the defendant had been frequently requested to reduce his account, the plaintiff obtained a verdict subject to this motion.

M'Intyre and Coxon showed cause against the rule, which was supported by *Morgan Lloyd.*

The Court said, that the question whether there had been a demand by the bank before they sued the surety was one for the jury, who had rightly found that the request to reduce the account amounted to a demand of payment. As, however, the plaintiff was bound to have satisfied his obligations to the bank at once, and would not have had to pay the costs of the judgment and execution, the damages must be reduced by their amount, but he was entitled to the costs of the writ, as until it issued he was in ignorance of the amount to be paid on his guarantee. The rule would be absolute to reduce the damages.

Kirby v. Simpson. June 3, 26, 1854.

ACTION AGAINST MAGISTRATE.—QUASHING ORDER OF COMMITMENT.—NOTICE OF ACTION.

Held, that an action cannot be maintained against a magistrate for committing the plaintiff to prison on a charge under the Masters and Servants' Act (26 Geo. 2, c. 14), without first quashing the commitment.

Held, also, that inasmuch as the trespass was caused by the defendant in his capacity of magistrate and in the execution of his office, the defendant was entitled to notice of action under the 11 & 12 Vict. c. 44, and a rule was discharged to set aside a nonsuit, where such notice had not been given.

THIS was a rule nisi obtained on April 20 last, to set aside the nonsuit and for a new trial of this action, which was brought by the plaintiff, as next friend of his son, to recover damages from the defendant for assaulting his son and giving him into custody, and for maliciously instigating his master to prefer a charge against him under the 26 Geo. 2, c. 14 (the Masters and Servants' Act), under which he was convicted, committed to *Beverley gaol* for three weeks, and whipped. It appeared that the plaintiff's son was in the service of a person, and had accidentally killed one of the defendant's ducks, and that the defendant had dismissed the boy with a reprimand, on his stating his belief the duck was a wild one, but had, about a week afterwards, proceeded under the above Statute on his master bringing the

boy before him and saying he had told him not to kill the duck. The commitment directed the boy to be corrected, and on the governor of the gaol writing to the defendant whether it was to be carried into effect, he had replied in the affirmative as the boy was very bad, and both his masters had complained to him that they could do nothing with him. The defendant pleaded "not guilty by Statute," and on the trial before *Cresswell, J.*, at the last York Assizes, a nonsuit was directed on the ground that the defendant was entitled to notice of action under the 11 & 12 Vict. c. 44.

B. Thompson showed cause against the rule, which was supported by *Price* on the ground that the question, whether the defendant had acted *bonâ fide*, should have been put to the jury, as if the defendant had acted *malâ fide* he was not entitled to notice, citing *Booth v. Clive*, 10 C. B. 827; 2 L. M. & P. 283.

The Court said, that the first count of the declaration was in trespass and complained

that the defendant had committed the plaintiff to prison. In order to prove this it was necessary to give in evidence the commitment, which put the plaintiff out of Court, as until it was quashed no action could be brought. It also showed on the face of it that the trespass was caused by the defendant in his capacity of a magistrate, which entitled him to notice. The second count was for maliciously inciting the plaintiff's master to make a charge before the defendant under the Masters and Servants' Act, and for maliciously and without reasonable and probable cause committing the plaintiff to prison on that charge. This was a count for an act done in execution of the office of a magistrate, inasmuch as it showed there was a charge before the defendant on which he acted, although it might be that he had incited it, but of which there was not sufficient evidence. The defendant was therefore entitled to notice, and the rule must be discharged.

ANALYTICAL DIGEST OF CASES,

SELECTED AND CLASSIFIED IN ALL THE COURTS.

House of Lords.

ANNULLING ADJUDICATION.

See *Bankruptcy*.

APPEAL.

Costs.—There had been a previous decree, in substance the same as that which was appealed against, but made in a different suit and by a different Judge: the appeal was dismissed with costs. *Russell v. Dickson*, 4 H. of L. Cas. 293.

And see *Bankruptcy*.

BANKRUPTCY.

Annulling adjudication. — Appeal. — Laches.—A person adjudicated a bankrupt under the 12 & 13 Vict. c. 106, must, if he desires to annul the adjudication, proceed under the 104th section of that Statute. If he omits to do so, he can then only proceed by petition of appeal before a Vice-Chancellor (to the Court of Appeal in Chancery under the 14 & 15 Vict. c. 83, s. 7).

On the 15th February, 1851, *A.* was adjudicated a bankrupt. On the 19th, a duplicate of the adjudication was served upon him, he did not appear to show cause against the adjudication, and on the 28th the notice of it was published in the *Gazette*. On the 19th of March, he presented a petition to the Commissioner to annul the adjudication. The Commissioner pronounced his decision on the 14th of April, and on the 23rd the bankrupt appealed to the Vice-Chancellor.

Held (affirming a decision of Lord Chancellor Truro), that the petition of the 19th March was a petition of appeal against the Commissioner's adjudication, and therefore could not be presented to the Commissioner, whose jurisdiction in such matters was then at an end;

that the party had no title to come before the Vice-Chancellor, except on appeal against the adjudication, and that for that purpose the petition was presented too late. *Carter v. Dimmock*, 4 H. of L. Cas. 337.

COSTS.

See *Appeal: Practice*.

EVIDENCE.

As to whether lands parcel of manor. — Entry by steward in book.—In an action of ejectment the question was, whether certain lands, known as Kingston Pastures, were part of the manor of Hayling? The lands had been purchased from the Duke of Norfolk. An entry in a book found among the muniments of the Norfolk family was tendered in evidence, for the purpose of proving the affirmative of the issue. The entry, which was made by a steward of that family, spoke of an indenture which "recited a lease made by the Earl of Arundel," and which, tracing the lands into the possession of *R. H.*, went on to say that "*R. H.* demiseth unto, &c., all those pasture grounds lying in Kingston, in the parish of Portsea, parcel of the manor of Hayling."

Held, that this entry was a mere recital of some document which the writer had seen or heard of, and was not admissible either as an entry made by a person in the discharge of his duty, or as an entry against the interest of the person who made it, nor was it evidence of reputation to prove that the lands were parcel of the manor. *Doe d. Padwick v. Willcomb*, 4 H. of L. Cas. 425.

And see *Leases*.

INSURANCE.

Time-policy. — Implied warranty of seaworthiness.—By the Law of England, in a time-policy

effected on a vessel then at sea, there is no implied condition that the ship should be seaworthy on the day when the policy is intended to attach.

Per Lord Campbell.—There is not, in a time-policy effected on a vessel then abroad, any implied condition whatever as to seaworthiness; not even as to the time when the vessel sailed on the voyage during which the policy attaches.

Quære, whether there is any such implied condition in a time-policy effected on an outward bound ship lying in a British port where the owner resides?

A policy of insurance was effected in London on the 27th of November, 1843, on a ship then abroad, "lost or not lost, in port and at sea, in all trades and services whatsoever and where-soever, during the space of 12 calendar months, commencing on the 25th September, 1843, and ending on the 24th September, 1844, both days included." To a declaration for a total loss on the 14th October, 1843, by perils of the sea, the defendant pleaded that the "ship was not, at the time of the commencement of the risk in the policy of insurance mentioned, nor at the making of the said insurance, nor on the said 25th September, 1843, in the declaration mentioned, seaworthy, or in a fit and proper condition to go to sea; but, on the contrary thereof, was wholly unseaworthy." It appeared in evidence, that on the 24th of September, 1843, the ship was at sea seriously damaged, and in that state it succeeded in making Madras in the course of the following day. The verdict found the plea to be proved in fact.

Held (affirming the judgment of the Court of Exchequer Chamber, which had reversed a previous judgment of the Court of Queen's Bench), that this plea did not afford a defence to the action, for that there was no implied condition that the ship should be seaworthy on the day when the policy was intended to attach. *Gibson v. Small*, 4 H. of L. Cas. 353.

LEASES.

Renewals.—Registered memorial of deed.—Evidence.—*S.*, on the 5th January, 1746, being tenant in fee simple of lands in Tipperary, executed an indenture, which was two days afterwards registered under the Irish Registration Acts. The memorial represented that *S.* had, by the indenture, demised or agreed to demise these lands to *C.* for three lives therein-named, with "a clause of renewal after the expiration of said lives thereinbefore-mentioned," provided that *C.*, his heirs, &c., should, "within six months from the death of the last of said three lives, nominate such life or lives as he would have inserted," and pay all rent, and "the sum of 11*l.* 7*s.* 6*d.* for adding or renewing such life or lives for ever." The memorial was signed by *C.* alone, and he registered it. In Feb. 1750, *S.* executed a settlement in contemplation of marriage, by which he made himself tenant for life only in the estate comprised in the indenture of 1746. In March, 1750, he executed a lease to *C.*, in which the indenture of 1746 was recited, and in consequence of some

changes in the lands a change was made in the rent. The lease recited the indenture as a demise to *C.* for three lives, and the longest liver of them, with a covenant to "renew the same for ever, on payment of 11*l.* 7*s.* 6*d.* for renewing the same on the fall of every life, within six months next after the fall of each life." The habendum in the lease was for the same three lives; and *S.* covenanted that "upon the death or failure of the aforesaid life or lives, or any or either of them" (meaning them), and upon *C.*, his heirs, &c., paying "the sum of 11*l.* 7*s.* 6*d.* above the annual rent, within the space of six calendar months, and immediately after the death or failure of such life," and on nomination, &c., "*S.*, and his heirs," &c., would add the life so nominated; "and so in like manner from time to time successively for ever thereafter on the failure of every other several life or lives in the said lease or thereafter to be nominated." Renewals had, from time to time, been made by the successors of *S.* in the estate, sometimes after proceedings in Chancery to compel the same, sometimes without such proceedings; but in 1845, *G.*, the descendant of *S.*, having absolutely refused to renew, a bill was filed against him by *B.*, who had become possessed of *C.*'s lease. The bill prayed for a renewal according to the lease, which *B.* alleged to have been made in conformity with, and under the obligation of, the indenture of 1746. This indenture could not be produced, but the memorial was tendered and received in evidence. The defendant alleged, that the lease was ineffectual to bind the inheritance, as it was made by a person who was, at the moment of executing it, only tenant for life, and he contended, that there was no legal evidence of the indenture of 1746. He also relied on the difference between the terms of renewal contained in the indenture and those contained in the lease:

Held, affirming the judgment of the Court below, that the plaintiff was entitled to the renewal as prayed; that the memorial was properly admitted as secondary evidence of the indenture; that that indenture was to be treated as an original lease, containing a covenant, under the obligation of which the lease of 1750 was executed; that the obligation entered into in 1746 being by the tenant in fee simple, his performance of it in 1750 was valid, although he was then only tenant for life; and that the acts of the successive tenants of the estate, although not evidence to prove the existence of the covenant, became, when the covenant had been otherwise proved, evidence of the construction which the parties interested had put upon it.

Upon one of the occasions of renewal, the tenant for life against whom a bill had been filed, was an infant. The Court of Chancery in Ireland ordered his guardian to execute a lease in conformity with the covenant contained in the deed of January, 1746.

Per Lord St. Leonards, that order was authorised by the Irish Statute 11 Anne, c. 3. *Sadtler v. Biggs*, 4 H. of L. Cas. 435.

LEGACY.

See *Will*, 1.

MANOR.

See *Evidence*.

PRACTICE.

Re-hearing. — Costs. — A judgment of this House given on an appeal cannot be reversed ; but where such appeal and judgment have been obtained by suppression and misrepresentation, the House will afterwards discharge the order granting the leave to appeal and the order constituting the judgment thereon.

A decree in Chancery was made in January, 1835, and enrolled in May of that year. A petition for leave to appeal against it (the proper time for appealing having gone by) was presented in February, 1839, and refused. The party who was dissatisfied with the decree filed a bill of review in 1844. A demurrer to that bill, for want of equity, was allowed. The order allowing the demurrer was appealed against in 1846, and in the appeal the original decree was expressly complained of. In July, 1847, there was a general dismissal of the appeal, and the order allowing the demurrer was specially mentioned in the order of dismissal ; but the original decree was not mentioned. In 1848, there was a petition for leave to appeal against the original decree and certain other orders made in the course of the proceedings, but which had not then been enrolled, and in the petition it was stated, that "it appeared by the order of July, 1847, that the decree of January, 1835, had not been complained of, and therefore that their lordships had not made any declaration with respect to it," and that "the said decree had never been adjudicated upon by their lordships." On this petition, and after other proceedings taken, leave was given to include in the appeal the decree of January, 1835. The appeal was heard *ex parte*, and in June, 1850, the decree was reversed.

Held, that this reversal had been obtained by suppression and misrepresentation, and the parties affected by it having petitioned for relief, the House discharged the order giving leave to appeal against the decree of January, 1835, and the order which had reversed that decree.

No costs were given. *Ex parte White v. Tommey*, 4 H. of L. Cas. 313.

RENEWAL OF LEASES.

See *Leases*.

WILL.

1. *Legacy. — Substitutional or additional.* — Where a legacy is given in each of two different instruments, the testator must, *primâ facie*, be understood to have meant to give two separate legacies ; but there may be circumstances to rebut that proposition.

A testator gave by his will, "To my natural or reputed daughter, *M. S.*, 2,000*l.*, for her own sole and separate use, the interest thereof, at 5 per cent., to be expended on her education ;"

and intrusted the care and charge of her to his brother. In a codicil, executed five years afterwards, he said, "I add 3,000*l.* to the 2,000*l.* to which *M. S.* is entitled under my will, by which she becomes entitled to 5,000*l.*" In about a year afterwards, and about 10 days before his death, he made a further codicil, in which he said, "Not having time to alter my will, and to guard against any risk, I hereby charge the whole of my estates and property in the funds with the sum of 20,000*l.*, for my daughter, *M. D.* ;" in this instance giving her his own name, as if she was a legitimate daughter.

Held, affirming the decree of the Court below, that there were circumstances here to rebut the *primâ facie* presumption in favour of the last legacy being treated as additional, and that it was only in substitution for the sums previously given. *Russell v. Dickson*, 4 H. of L. Cas. 293.

2. *Construction. — Proviso.* — "*Living at her death.*" — *M. D.*, devised certain estates to his nephew, Sir *J. E.*, Bart., for life, and after Sir *J. E.*'s decease, to his second son, and his heirs male ; and in default to the third son, and his heirs male, and so on, with a proviso that if the baronetcy should come or descend to the second son of Sir *J. E.*, the estates should go over to the next in succession. *P. J.*, the father of Lady *E.*, by a will made subsequently to that of *M. D.*, devised his estates to his daughter, Lady *E.* for life, then to her eldest son for life, and his heirs, and for default, &c., to the second son of Lady *E.* for life, and to his heirs ("in case he shall not become, or shall not continue, seised of the real estates of *M. D.* by virtue of his will"), and to the third and every other son of Lady *E.*, subject to the like condition : "provided always, that if it shall happen that my said daughter shall have no issue male of her body *living at her death*, or no such issue male as shall be entitled, by the true meaning of this my will, to my real estates, hereby limited and settled as aforesaid, then, and in either of those cases, I devise all my said real estates, subject respectively as aforesaid, to all the daughters (if more than one) of the body of my said daughter, who shall be living at her death, as tenants in common, and their heirs, &c.," with cross remainders amongst them ; "and if there should be but one such daughter living at my said daughter's decease, and no issue of any other such daughter then in being, then to such only surviving daughter and her heirs." At the time of the death of Lady *E.* there were two sons and several daughters living ; both sons afterwards died without issue :

Held, that the daughters of Lady *E.* did not take any estate under the limitations of the will of *P. J.*, for that the words "living at her death" applied to both branches of the proviso, and that the contingency on which the daughters were to become entitled determined at the death of their mother. *Eden v. Wilson*, 4 H. of L. Cas. 257.

The Legal Observer,

AND

SOLICITORS' JOURNAL

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SATURDAY, JULY 8, 1854.  
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SUMMARY EXECUTION ON BILLS OF EXCHANGE.

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THREE months ago—namely, on the 8th April, immediately after this important alteration in the Law was proposed by Lord Brougham—we submitted to our readers a very full statement of the clauses in the Bill, with the explanatory observations of its promoters. It does not appear that any objection was at first taken to the measure, either in town or country, upon public or professional grounds. The Bill comprised a clause authorising all attorneys and solicitors of the Superior Courts to act as notaries for the purposes of the Act; but in the Select Committee to which the Bill was referred, this provision was struck out, in consequence of the opposition of a very large body of the bankers and merchants of London. The Bill, as altered by the Select Committee, was re-printed on the 18th May, and the 20th clause of the amended Bill expressly provided that the Act should not interfere with any existing remedy of the holder of a bill or note, either at Law or in Equity.

The Bill came down to the House of Commons on the 2nd June, and the attention of the Profession was afterwards called to the injury likely to be inflicted by limiting the protesting dishonoured bills to notaries public, particularly in country districts. But until within the few last days, it does not appear that any objection was raised to the principle of the Bill as it may be supposed to affect the *public* at large. The time, however, seems to have arrived when the subject must be fully discussed with reference as well to the alleged evils which the Bill proposes to remove, and the benefits it seeks to confer on the com-

mercial community, as in its consequences to the legal practitioner.

There are, therefore, two points of view in which to consider this question:—1st, the interest of the public; and 2nd, the interest of the practitioner in carrying the measure into effect. Looking at the prevailing spirit of reform it would be manifestly in vain to appeal to Parliament in behalf of the Profession, unless it can be shown that the good of the public is at stake. We apprehend that any petition against the measure from the Attorneys, founded on the anticipated injury to themselves, would be altogether ineffectual. We should have the Honourable Mr. Bouverie again urging, "That the fact of the Bill being opposed by the attorneys was the strongest argument in its favour." Let us, therefore, in the first place investigate the *public* grounds on which its promoters endeavour to support their proposition.

The argument in favour of the *principle* adopted by the Law of Scotland, and which it is thus proposed to extend to England, is briefly as follows:—

"That bills of exchange and promissory notes ought not to be treated as *mere contracts* for the payment of money, enforceable only by action, in which the *onus probandi* on every point rests with the holder, but as *securities* which are certainly to be paid when due."

And it is contended that the advantage arising from this rule of law is, that bills and notes are circulated as money, and the only point to be considered by the person receiving them is, whether the credit of the parties is satisfactory. It is held that when a man puts his name to a bill as drawer, acceptor, or indorser, he advisedly pledges his credit to the fullest extent that he will pay it. Consequently under the

Scotch "summary diligence" system, it follows that payment may be enforced by speedy process, unless the party called upon to pay can show a sufficient defence.

Now, in opposition to this view, it is contended that since the recent amendments in the procedure of the Common Law Courts, there is quite sufficient of "summary diligence" or speedy execution for any safe or useful purpose. Judgment may be obtained in eight days from the service of the writ of summons, and execution may be issued in another eight days, at a less expense in the Superior Courts than in the County Courts. If this time be too long, it may be shortened, without resorting to a new mode of procedure which cannot safely be cheaper, and probably will be dearer, for the fees must be adequate to pay the salary of the new registrar and the expense of his establishment.

We are informed, moreover, that a large body of merchants, manufacturers, and traders of London are now coming forward to oppose the Bill, because they are of opinion that *six* days is too short a time to place a debtor within the absolute power of an execution against his body or goods by a hostile creditor. We have just been put into possession of the substance of a petition from the London Association for the Protection of Trade, consisting of several thousand members of the mercantile, manufacturing, and trading classes; and they represent that the Bill will be prejudicial to the interests, both of debtors and creditors. Their objections may be thus summed up:

1st. That the proposed enactments will operate with great severity and oppression on small traders whose means of meeting engagements depend on their customers' punctuality, and their general business returns.

2nd. That a trader who may have indorsed an acceptance, and from the default of others is unable to meet it, can under the present law obtain time at a moderate expense, and in the interval may be enabled to find the means of payment.

3rd. That whatever may be the case with regard to the acceptor, it is unjust to subject the drawer, and still more the indorser, of a bill to immediate execution,—making no allowance for unavoidable accident or illness or death of the parties primarily liable.

4th. That where a trader conceives he has a defence either wholly or partially, it is a great hardship to shut out such defence, unless he can find security for the

debt and costs; and in many instances he may be unable to procure such security. This will often operate as a denial of justice.

5th. That such speedy execution against all parties to a bill will work great injustice to the other creditors of the defendant whose property may be taken in execution. The credit of the debtor is pledged to all alike, and it is an unfair preference to enable a bill holder to sweep away, it may be, the whole of the debtor's assets, or to sacrifice a large part of them by a premature sale under an execution.

6th. That if the Act should pass into a law, traders, in order to prevent an undue preference where the hostile holder of a bill refuses to grant time, will be driven to immediate bankruptcy, although they might be able to maintain their position if time were allowed.

7th. That the harshness of the law will often induce debtors to resort to unfair means for the purpose of saving themselves or their other creditors from what they may deem oppressive consequences.

8th. That there will be great danger of perverting the proposed summary proceedings to fraudulent purposes by collusion between debtors and fictitious creditors, for a dishonest debtor might obtain an extensive credit, avoiding generally the acceptance of bills, and enable a few fictitious creditors to register their bills and take precedence of the *bond fide* creditors.

9th. That the effect of the bill will probably be, largely to diminish the issue of bills of exchange, and thereby lessen the facilities of carrying on trade.

These reasons in behalf of the trade and commerce of the country evidently deserve the most serious consideration. The petitioners object to the Bill in toto.

We proceed next to consider the question as it bears on the rights and privileges of the practitioners in the Superior Courts. Now, inasmuch as this new business of noting and protesting bills for the *purpose of registration* must be done by a legal agent, it had better be confided to *one* than divided between *two* classes of practitioners. In London *none* of the notaries (with, we believe, two exceptions only) are attorneys; and after they have noted and protested the bill, it must be handed over to an attorney of the Court of Common Pleas to get registered and procure the order of a Judge. As the attorney can readily perform the whole duty, and the notary cannot, why should two persons be employed? It is very much like the practice which prevailed

in the Courts of Law and Equity when a clerk in Court must be employed as well as an attorney or solicitor; or, as still prevails in the Ecclesiastical Courts, where a solicitor prepares the will, but a proctor must prove it, and then it comes back to the solicitor to get it construed by the Judges of Westminster Hall.

It is not to be wondered at that the bankers in London, who are in daily communication with their notaries, prefer that their mode of business should not be disturbed; but it must be recollected that we are now dealing with unpaid bills on which legal proceedings must be taken; and which are now intrusted to the attorneys of the holders. It seems reasonable, therefore, that if for the public advantage the mode of proceeding should be changed, the duty should be performed by the attorney and not the notary. At present the mass of inland bills are noted only, not protested, and returned by the banker to his customer. The notary will retain all his ordinary business, and cannot be entitled to the advantage of the new course of proceeding which is to be substituted for that which is now performed by the attorney. It clearly should be given to the latter in return for that of which he is deprived.

With the country attorney, however, the case is different. The notaries in the country are in general attorneys, and if the holder of a dishonoured bill is compelled to resort to a notary for the first step towards registration, the holder may leave him to carry forward the rest of the proceeding, instead of employing his usual attorney, and thus the latter may be frequently prejudiced in his practice.

It seems necessary, therefore, that if the Bill is to pass, the proper amendments should be made to remove this objection, and that at all events the attorneys and solicitors practising beyond 10 miles from London should be expressly authorised *for the purposes of the Act*, to note and protest bills which are intended to be registered. They of course will not interfere with other notarial business, especially in the sea-ports where notaries are extensively engaged in shipping transactions.

With regard also to bills which have to be given in evidence in foreign Courts, it appears that the protests of the regular notaries public are alone receivable, and, consequently, bills or notes which may probably have to be enforced abroad should be sent to a general notary, instead of an attorney acting under the special provisions of the Statute.

On the whole, however, we can discern no necessity for this new law. The recent alterations in the mode of proceeding, the sufficient rapidity of those proceedings, and the moderation of the expense, render any change uncalled for; and we trust that the objections on public grounds will prevail and that the Bill will be rejected altogether.

## REPEAL OF USURY LAWS' BILL.

It is proposed by section 1 of this Bill, to repeal the whole of the following Acts:—37 Hen. 8, c. 9; 13 Eliz. c. 8; 21 Jac. 1, c. 17; 12 Car. 2, c. 13; 12 Anne, Stat. 2, c. 16; 13 & 14 Vict. c. 56; 14 Jac. 6, c. 225 (*Scotch*); 15 Jac. 6, c. 251 (*Scotch*); 23 Jac. 6, c. 28 (*Scotch*); 10 Car. 1, Sess. 2, c. 22 (*Irish*); 2 Anne, c. 16 (*Irish*); 8 Geo. 1, c. 13 (*Irish*); 5 Geo. 2, c. 7 (*Irish*); together with so much of the 3 Car. 1, c. 4, s. 5, as makes perpetual the 21 Jac. 1, c. 17, so much of the 13 Car. 2, Stat. 1, c. 14, as confirms the 12 Car. 2, c. 13; and so much of the 5 & 6 Wm. 4, c. 41, as relates to securities given for considerations arising out of usurious transactions.

Section 2 provides, that nothing contained in the Act shall prejudice or affect the rights or remedies, or diminish or alter the liabilities of any person in respect of any act done previously to the passing of the Act; and section 3 proposes to enact, that where interest is now payable upon any contract, express or implied, for payment of the legal or current rate of interest, or where upon any debt or sum of money interest is now payable by any rule of law, the same rate of interest shall be recoverable as if this Act had not been passed.

## COURT OF CHANCERY, COUNTY PALATINE OF LANCASTER BILL.

THE Chancellor of the Duchy and the Lords Justices of the Court of Appeal in Chancery shall form the Court of Appeal in Chancery of the County Palatine; (s. 1).

After the commencement of Act the jurisdiction of the Court of Chancery of the County Palatine and in matters of appeal therefrom now exercised by the Chancellor alone or along with the Judges of assize shall be exercised by the Court of Appeal; (s. 2).

The Court of Appeal may direct that any cause, interlocutory application, or other matter shall be heard originally before it, and shall have as full jurisdiction over all matters in the Court of Chancery of the County Palatine as it has over matters depending in the Court of Chancery; (s. 3).

The jurisdiction of the Court of Appeal may be exercised by one Lord Justice and the Chancellor of the Duchy sitting together or by both Justices sitting apart from the Chancellor of the Duchy: provided that the Chancellor

of the Duchy may, while sitting alone, exercise the like jurisdiction as might have been exercised by him sitting alone, if this Act had not been passed; (s. 4).

Decrees, &c., of the Court of Appeal may be appealed from to the House of Lords; (s. 5).

The decision of the majority of the Court of Appeal shall be the decision of the Court; and if the Judges be equally divided in opinion, the decree or order appealed from shall be affirmed; (s. 6).

The Court of Appeal shall make regulations for the sittings and business of the Court; and the registrar and other officers now attendant on the Chancellor of the Duchy in matters of appeal shall be the registrar and officers of and attendant on the Court of Appeal: provided that any order of the Court of Appeal shall be drawn up by any registrar of the High Court of Chancery, if so directed; (s. 7).

The powers given by the 13 & 14 Vict. c. 43, s. 1, to the Chancellor of the Duchy, with the advice and consent of the Vice-Chancellor of the County Palatine, and one of the Vice-Chancellors of the High Court of Chancery by any rules or orders to make alterations in the form of writs and commissions, and the mode of sealing, issuing, executing, and returning the same; and also in the form of and mode of filing bills, answers, depositions, affidavits, or other proceedings, and in the form or mode of obtaining discovery by answer in writing or otherwise; and in the form or mode of pleading and of taking evidence, and generally of proceeding to obtain relief and in the general practice, and in the form and mode of proceeding before the registrar, and of drawing up, entering, and enrolling orders and decrees, and of making and delivering copies of pleadings and other proceedings, and also to regulate the taxation, allowance, and payment of costs, and all other the business of the said Court, shall be exercised with the advice and consent of one of the Lords Justices of Appeal and the Vice-Chancellor of the County Palatine; (s. 8).

The Court of Appeal, upon the application of any person concerned, may make orders for the protection of any ward, or executor, administrator, officer of the Court, or other person entitled to the protection of the Court, or for the punishment of any contempt, as to the Court of Appeal shall seem just, and according to the practice of the High Court of Chancery in like matters; (s. 9).

In cases in which any necessary party shall not be subject to the jurisdiction of the Court, the Court of Appeal, on the application of the plaintiff or of the party proceeding, may direct that the same be transferred to the High Court of Chancery, or that such service be effected upon such person out of the jurisdiction of the Palatine Court, and such application shall be made *ex parte* or on such notice as the Court of Appeal shall think fit: provided that if such order for service shall have been made without notice to any person affected thereby, the Court of Appeal may, upon the application of such

person, make such order for transferring the case to the High Court of Chancery, or otherwise, as shall seem just; (s. 10).

In case such suit shall be so transferred, all proceedings therein shall be transmitted by the officer of the Palatine Court to the proper officer of the High Court of Chancery, to be filed, and the same shall thereafter be proceeded with according to the practice of that Court; and in case service shall be directed as aforesaid, the same shall be of the same effect, and the same proceedings may be had thereupon, as if service had been duly effected within the jurisdiction of the Palatine Court; (s. 11).

The provisions in the 13 & 14 Vict. c. 43, for enforcing decrees and orders of the Palatine Court, by making them decrees or orders of the High Court of Chancery, shall apply to decrees or orders of the Court of Appeal; (s. 12).

The power of the Vice-Chancellor of the County Palatine, when out of the limits of the jurisdiction of the said Court to hear and determine pleas, demurrers, exceptions, applications for injunctions, both upon notice and *ex parte*, for dissolving injunctions, for the appointment of receiver, for the payment of money into and out of Court, or for confirming reports, and all motions, petitions and other matters for facilitating the progress of any suit pending in the said Court, extended to the final hearing and determination of causes and other matters; provided, that the Vice-Chancellor shall hold in every year at least four Courts for the despatch of business within the said county, at such places and intervals of time as the Chancellor of the Duchy shall appoint; (s. 13).

All the powers and authorities given by the Trustee Act, 1850, and by the 15 & 16 Vict. c. 56, to the Court of Chancery in England may be exercised in like manner, and are extended to the Palatine Court of Chancery with respect to lands and personal estates within the County Palatine; provided that no person who is anywhere within the limits of the jurisdiction of the High Court of Chancery, shall be deemed by the Palatine Court to be an absent trustee or mortgages within the meaning of the said Acts; (s. 14).

The powers of the High Court of Chancery to deal with the property of infants or others under disability, and in the administration of assets, may be exercised by the Palatine Court as regards persons and property within its jurisdiction; (s. 15).

All moneys payable under the 13 & 14 Vict. c. 43, s. 12, into the Bank of England in respect of lands within the County Palatine under the Lands Clauses' Consolidation Act, 1845, or any local or special Act, or under the 10 & 11 Vict. c. 96, may be paid into the branch Bank of England within the County Palatine, to the joint account of the Clerk of the Council of the Duchy and the Registrar and Comptroller of the district within which such bank is situate; provided that no moneys shall be so paid under the Lands Clauses' Consolidation Act, 1845, or

any local and special Act, in case the party who would have been entitled to the rents and profits of the lands in respect of which such moneys shall be payable, or any guardian or committee in case of infancy or lunacy, shall serve a notice in writing at the office of the company taking the lands, requesting them not to make the payment; (s. 16).

In all proceedings under this Act the Palatine Court of Chancery and the Court of Appeal respectively, shall have full jurisdiction to deal with the costs, and all orders made by the said Courts respectively, in pursuance of this Act, shall be subject to appeal in the same manner as any other orders of the Palatine Court of Chancery; (s. 17).

## LETTERS PATENT FOR INVENTIONS' BILL.

THIS Bill (which is to be construed as one Act with the Patent Law Amendment Act, 1852) proposes to enact that the Lord Chancellor may seal letters patent at any time, whe-

ther one month or more than one month, after the expiration of the term of provisional protection (whether such expiration has happened before or shall happen after the passing of this Act), and may extend the time for filing the specification whether for one or more than one month, provided the delay in such sealing and the filing of such specification has not occurred through the neglect or wilful default of the applicant.

It also provides, that in cases occurring after the passing of the Act, the applicant or his agent shall give notice to the Commissioners of Patents the day after the expiration of the term of provisional protection, that he will apply to be allowed to have his letters patent sealed and specification filed under the provisions of this Act.

It is further provided, that in such cases occurring after the passing of this Act, it shall not be lawful for the Lord Chancellor to extend the time for sealing any letters patent, or filing the specification, beyond the period of six months.

## DIFFERENCES IN THE MERCANTILE LAWS OF ENGLAND AND IRELAND FROM THOSE OF SCOTLAND.

THE proposed assimilation of the Law of England, in regard to bills of exchange and promissory notes, with that of Scotland, being now under the consideration of the Legislature, it may be useful to compare the two systems as set forth by the Mercantile Law Commissioners in their paper of questions which has been sent to the several Law Societies:—

### *England and Ireland.*

#### BILLS AND NOTES.

##### *Construction of Contract.*

1. If blank as to date are deemed to be dated on the day of issue, of which oral evidence may be given.

2. A bill has no operation to charge specific funds of the drawer in the hands of the drawee. *Laycock v. Johnson*, 6 Hare, 199.

3. A bill drawn on a party in Scotland is a foreign bill.

It therefore requires protest, to preserve recourse against the drawer and indorsers, and the acceptance need not be in writing.

4. Inland bills need not be protested for non-acceptance or non-payment.

5. Though bills and notes import consideration, yet the absence of consideration may be shown by any legal evidence.

6. Proof that the bill had been lost, stolen, or fraudulently obtained, throws upon the holder the onus of showing that he gave consideration for it.

7. Minors cannot become parties to bills or notes, so as to render themselves liable to an action during minority, or after minority unless they confirm them.

8. In general, married women cannot be parties to bills or notes, so as to sue, or be sued upon them.

### *Scotland.*

#### BILLS AND NOTES.

##### *Construction of Contract.*

1. If blank as to date, summary diligence cannot be used: and if the sum exceed 100*l.* Scots (8*l.* 6*s.* 8*d.*) the date, even in an ordinary action, can be supplied only by written evidence.

2. A bill operates as an assignment of funds of the drawer in the hands of the drawee.

3. A bill drawn on a party in England or Ireland is a foreign bill.

4. Inland bills must be protested for non-acceptance or non-payment, to preserve recourse against the drawer and indorsers. 12 Geo. 4, c. 72, s. 41.

5. The presumption of onerous consideration given cannot be rebutted otherwise than by the writing or oath of the holder.

6. Notwithstanding that the bill is shown to have been lost or stolen, the onus is on the party sought to be charged, to show that the holder gave no consideration.

7. Minors engaged in trade may become parties to bills and notes, in the course of their business, so as to render themselves liable without the concurrence of their curators.

8. A married woman, whose husband has left Scotland, carrying on business apart from him, may become a party to bills or notes in



*England and Ireland.*

## BILLS AND NOTES.

*Construction of Contract.*

9. In general, corporations can bind themselves under seal only, and therefore they cannot be parties to bills or notes.

10. Proceedings to enforce payment of a bill or note, must be taken within six years after the time at which it became payable, if not received by acknowledgment. 21 Jac. 1, c. 16, s. 3 (England); 10 Car. 1, sess. 2, c. 6 (Ireland).

11. *Notice of dishonour* by non-acceptance or non-payment must be given within a reasonable time.

Reasonable time is, in the general case, the next post after the day of dishonour.

12. An inland bill *may* be protested for non-acceptance or non-payment—9 & 10 Wm. 3, c. 17, and 4 Anne, c. 9 (England); 9 Geo. 4, c. 24, s. 1 (Ireland)—but it is not imperative, and in practice a protest is seldom made.

13. Proof of presentment may be made by oral evidence.

14. A bill is not negotiable if it be not made payable "to order" or "to bearer."

15. Payment can be enforced by an action only.

Upon non-appearance of the defendant within eight days of the service of a writ of summons specially indorsed, execution may issue after eight days from the last day for appearance; but if the defendant appear, the plaintiff can recover only by proceeding with his action—15 & 16 Vict. c. 76, s. 27 (England); 16 & 17 Vict. c. 113, s. 96 (Ireland)—contains a somewhat similar provision.

16. Indorsee of a bill overdue takes it subject to all the equities and objections to which it was subject in the hands of the indorser, as far as they are intrinsic to the bill, but not subject to collateral matter, such as a right of set-off against the former holder.

17. Acceptance of an inland bill must be in writing on the bill.

But the name of the acceptor need not be signed.

18. Acceptance of a foreign bill may be verbal or detached.

19. The liability of any party to a bill or note may be discharged *orally* before it becomes payable. *Foster v. Dawber*, 6 Exch. 839.

And perhaps after it has become payable. *Ibid.* p. 851.

*Scotland.*

## BILLS AND NOTES.

*Construction of Contract.*

that business, so as to sue and be sued upon them. See *Churnside v. Currie*, 2 Bell's Comm. 167.

9. Corporations may by the signature of their office-bearers become parties to bills or notes. Thomson on Bills, 216.

10. An action to enforce payment of a bill or note must be raised within six years after the sum has become exigible.

But after the expiration of the six years, it is competent to raise an action for the debt for which the bill or note was granted, and to prove that the sum is owing by the writing or oath of the debtor.

11. *Notice of dishonour* given within 14 days is sufficient to preserve recourse against the drawer and indorsers.

12. Protest on the dishonour of an inland bill by non-acceptance or non-payment is indispensable to preserve recourse against the drawer and indorsers.

13. Presentation cannot be proved by parole evidence, but by notarial protest only.

14. A bill is negotiable, though not expressed to be payable "to order" or "to bearer."

15. Summary diligence or execution to enforce payment is competent within six months after registration of the protest.

The debtor may obtain suspension of the diligence, on cause being shown to the satisfaction of the Court of Session; but, in the general case, only on the terms of obtaining a cautioner.

16. The indorsee of a bill overdue is not subject to latent objections attaching to the bill, if there be no marks of dishonour on the bill and nothing suspicious in the transaction.

17. A written promise on a separate paper to accept a bill amounts to acceptance so as to ground an ordinary action, and complete the bill as an assignment, though not so as that summary diligence may be used.

18. Proof of a verbal promise to accept a bill is incompetent as to foreign as well as inland bills.

19. Express discharge of any party to a bill or note from liability upon it can only be proved by writing, or oath on reference.

## CONSTRUCTION OF STATUTES.

### JURISDICTION IN EQUITY IMPROVEMENT ACT.

#### ORDER UNDER S. 52 ON DEATH OF OFFICIAL ASSIGNEE.

THE supplemental order to be obtained on motion under the 15 & 16 Vict. c. 86, s. 52, upon the death, pending the suit, of a defendant, the official assignee of a bankrupt, substituting his successor, is as of course and without affidavit in support. *Gordon v. Jesson*, 16 Beav. 440.

#### INJUNCTION UNDER S. 58 TO RESTRAIN ACTION AT LAW.

On a motion for an injunction to stay further proceedings in an action at law, the *Master of the Rolls* said, "the 58th section of the Improvement of Jurisdiction Act does not destroy the plaintiff's right to the benefit of a discovery, in aid of his defence to an action at law, and it does not assimilate the practice, completely and entirely, to that in special injunctions, but so far only as the nature of the case will admit,"—that is, the common injunction is not now to be obtained merely on the defendant's default, as formerly, but a *prima facie* case must be stated on the bill, and be supported by affidavit. Where, therefore, the defendant has not answered the bill, but has filed affidavits, stating facts, which if there were nothing more in the case, would be sufficient to displace the plaintiff's equity, yet, as it is quite possible that additional facts restoring that equity may be brought out by the answers to the interrogatories, the Court will grant an injunction till answer. . . . The adoption of any other course would, practically, prevent the defendant at law obtaining the benefit of a discovery in such cases.

"The injunction will stay the trial, and on the answer being put in, the defendants may move in the same way as formerly and have the injunction dissolved, if cause is not shown on the answer. I do not, however, decide whether an affidavit may or may not be filed on the motion to dissolve." *Senior v. Pritchard*, 16 Beav. 473.

## JUDGES' SALARIES.

### PAYABLE OUT OF CONSOLIDATED FUND.

It appears from a return to the House of Lords, ordered to be printed June 1st, that the total amounts of the salaries of the Judges of

the following Courts, payable out of the Consolidated Fund, or a grant of Parliament, are as follow:—

|                                      |          |    |   |
|--------------------------------------|----------|----|---|
| Court of Chancery ( <i>England</i> ) | £39,000  | 0  | 0 |
| Queen's Bench . . . . .              | 28,000   | 0  | 0 |
| Common Pleas . . . . .               | 27,000   | 0  | 0 |
| Exchequer . . . . .                  | 27,000   | 0  | 0 |
| Admiralty . . . . .                  | 4,000    | 0  | 0 |
| Insolvent Debtors' Court . . . . .   | 5,000    | 0  | 0 |
|                                      | £130,000 | 0  | 0 |
| Court of Chancery ( <i>Ireland</i> ) | £11,969  | 4  | 8 |
| Queen's Bench . . . . .              | 16,177   | 13 | 4 |
| Common Pleas . . . . .               | 15,678   | 15 | 8 |
| Exchequer . . . . .                  | 15,678   | 15 | 8 |
| Insolvent Debtors' Court . . . . .   | 1,846    | 3  | 4 |
| Civil Bills' Court . . . . .         | 32,516   | 15 | 0 |
| Incumbered Estates' Court . . . . .  | 5,500    | 0  | 0 |
| Admiralty Court . . . . .            | 500      | 0  | 0 |
|                                      | £99,867  | 7  | 8 |
| Court of Session ( <i>Scotland</i> ) | £42,300  | 0  | 0 |
| Sheriffs' Court . . . . .            | 53,260   | 0  | 0 |
|                                      | £95,560  | 0  | 0 |

## TAXES ON THE ADMINISTRATION OF JUSTICE.

### THE COUNTY COURTS.

WE have a hundred times during the last twenty years called the attention of the Profession to the enormous grievance of the fees paid by the suitors (in the first instance advanced by their attorneys and solicitors) at almost every step in an action or suit. We are aware that those who think "litigation is an evil," maintain that its extent should be checked by throwing a large part of the expense upon the litigants; but it must be recollected that if not only the Judges, but all their officers were paid by the state, there would still remain an ample impediment in the risk, uncertainty, and trouble of legal proceedings, and in the large and unavoidable outlay for witnesses, fees of counsel and attorneys. However cheap and expeditious may be the course of proceeding in any Court, the plaintiff, on the one hand, must always incur the danger of increasing his loss if he is unsuccessful or the defendant be unable to pay; and, on the other hand, the latter in resisting the claim encounters the risk of increasing the debt by his own and his adversary's costs.

Apart, therefore, from grounds of policy, it seems just and right, and the first duty of the Government, to provide the means for determining questions arising either out of the doubtful state of the law, or the uncertainty of the facts upon which

the Courts are to adjudicate. On this subject we avail ourselves of the observations of Lord Brougham in the debate of the 16th of May. His Lordship said—

“It would be superfluous at this time of day, in the latter half of the 19th century, to enter into arguments to show the utter injustice and impolicy of any taxes whatever on law proceedings. Sixty years ago Mr. Bentham had demonstrated their entire and monstrous absurdity and iniquity.

“How would any one hear the proposition that a tax should be imposed, which a particular portion of the community—so many thousands, or tens of thousands,—should alone pay for the benefit of the whole? Yet that was the proposition of those who said that the suitors in the County Courts should singly pay a tax the use of which was beneficial to the whole community,—that use being the administration of public justice, a matter manifestly for the benefit, not simply of the individuals immediately concerned, but of the entire body of the nation. You single out a certain number of her Majesty’s subjects, say 100,000 persons, or whatever the number representing the suitors in the County Courts might be, and you say that these 100,000 persons should pay the entire taxation imposed on the administration of justice, which is a thing concerning the entire community, the community accordingly deriving the full use of that benefit which the 100,000 individuals are compelled singly to pay for—compelled, that was to say, because in the assertion of a right, or in the repelling of a wrong, they resolved to put into operation that justice the administration of which, in their case, served to benefit all the rest of the community, who yet were permitted to avail themselves of that benefit without contributing to pay for it. Nor was even this the worst feature of the abuse; for the persons who were thus mulcted by the State were precisely those who, from the very operation of the suit in respect to which they were mulcted, were least able to bear additional burdens. At the very moment when all the other expenses of a suit were, perhaps, weighing down a man—the professional charges, the cost of evidence, and similar necessary outlay—down came the Treasury with a demand, by way of tax, exceeding in amount, not improbably—the whole of the charges for professional skill and labour. It was not enough that the suitor should pay for the skill, or the want of skill,—that he should pay all the regular and fairly understood expenses of his case and its consequences. The Government must at that moment overwhelm him with a monstrous tax.

“There was much talk just now of the defences of the country—and heaven forbid a stone should be left unturned to render them complete!—but how would a proposition be received for casting on the frontier, or the southern coast,—say, the whole burden of these defences, leaving the inland counties free from any contribution to the object?—for making,

in other words, the southern counties bear the whole coast of our militia, and our army, our navy, and our coast-guard, on the plea that they would immediately benefit most by the protection? Such a proposition would not be endured for a moment; yet this was the very thing, in another but not less monstrous manner, that you were now doing with the suitors in County Courts. They underwent the expense, the harassment, the vexation, the risk of litigation, by which the whole country mediately benefited, and for that reason they were made singly to bear a heavy burden of taxation besides,—a burden which operated not merely as a burden on the suitors for justice, but as an obstruction to the administration of justice itself.

“Let him put a case to his noble friend opposite. Suppose—which heaven forbid!—a riot should happen in the part of the town which he honoured with his abode, or that fire should be attempted to be set to his mansion, and that he should have occasion to call in the aid of the civil power, and then of the military force, to save his property, his life, from destruction—how would he, when the object had been happily so effected, relish the intimation that his property, his life perhaps, having been so preserved by the police and the soldiery, he must pay the bill of the police for attending, and of the military for attending? He would reply, that he paid his share, as a member of the community, of those taxes by which both police and military were maintained, in common with other purposes, for the protection of the subjects generally; and he would protest that it would be very hard upon him, in addition to all the alarm and anxiety, and perhaps loss he had undergone, to pay all the cost of the force which had been called in for his protection as one of those subjects. Yet that was a parallel case with the case of the suitor in the County Court. The noble lord, on this supposition, would have to pay, not only for the military and police who had aided him in his particular need, but for military and police with whom he had nothing to do, and of whom he had thought himself quit on paying his quota, as one of the community, to their maintenance. So the County Court suitor had to pay, not only for the Judge, and the clerk, and the bailiff, and what not of the court in which his case was heard, but he had to pay a heavy tax for County Courts in all parts of the country, with which he had nothing to do.

“The access of suitors to the County Courts was obstructed by the fees which were levied upon them, and the money thus extracted or extorted was applied to defray the salaries of Judges and to provide the buildings in which suits were investigated. He conceived that it was the bounden duty of a Government to provide for the administration of justice and to place the expenses of that administration of justice upon the community at large, instead of allowing it to fall upon suitors who could ill afford the payment. The Government ought not to aggravate the weight which the bare fact of being

suitors imposed upon men in such a position, but they should throw the charge of providing for the administration of justice upon the community at large, because it was the duty of the Government to afford its subjects full protection in return for the allegiance exacted from them. He might be told that the plaintiff recovered the amount of the fees if the defendant could pay them, but in two out of three cases the defendant was unable even to pay the court fees. At the very moment when a man might, by various accidents or misadventures, or by the pettifogging, chicanery, or dishonesty, or malpractices of others, be suffering the greatest loss, what did the Exchequer do? Why, the moment when the suitor was complaining of the dishonesty of one party and the insolvency of another was the very time chosen by the Government for pouncing upon him, and subjecting him to still greater exactions, sharing, as it were, with knaves the fruits of their dishonesty. This system reminded him of the story of a certain man who 'fell among thieves.' A person who appeared to be passing accidentally found him lying exhausted upon the ground, and inquired, in sympathising tones, 'Pray, what is the matter with you, sir?' 'Oh,' was the reply, 'a villain has run off with my purse and my hat.' 'Why,' asked the false Samaritan, 'are you quite exhausted?' 'Yes, almost entirely.' 'Try, can't you move a little?' 'No, I cannot stir.' 'Oh, then, if that is the case,' said the interrogator, 'I'll take your wig.' Now, that was just the conduct of the Government in this instance. They found the suitor plundered by the malpractices or insolvency of others, and they said to him—at the time he could least afford it—'Come, pay these fees; they are only 3*l*. 11*s*. 8*d*.; it is true that in the Court of Queen's Bench the same fees are only 1*s*., but they are 3*l*. 11*s*. 8*d*. here, and you must pay.'

In this debate the attention of Lord Brougham, as we have thus seen, was principally directed to the taxes on the proceedings in the County Courts. It appears that no less a sum than 260,000 is on the average annually paid by the suitors for the salaries of the Judges, officers, and other expenses of these local Courts, being for the most part 20 or 30 per cent. on the sums recovered. If such an enormous expense for the mere machinery of the Courts, *exclusive of the payments to witnesses, counsel, and attorneys*, had been known at the time they were proposed, it is very probable that the project would have been rejected altogether or materially modified. Perhaps the then existing Courts of Request would have been improved and rendered uniform in their limited jurisdiction. The result is now so monstrous that we need not marvel it should be brought prominently before the Legislature; and yet in the present state

of public affairs, it is a hopeless attempt to throw any large part of this burthen on the Consolidated Fund.

As, however the County Court Commissioners are busily engaged in the consideration of those local tribunals, it will be useful to notice the several prominent statements relating to them, comprised in Lord Brougham's speech, and to offer some explanations and remarks bearing on the topics brought forward. We presume his lordship was correctly informed of the striking results on which he commented. According to the report in the *Times*, his lordship stated that—

"The number of causes tried in the County Courts—he ought rather to say, the number of actions brought in those Courts—upon the average of the last six years was 435,641 yearly, and the amount involved was 1,400,000*l*. But during the last three years, since the extension of the jurisdiction from 20*l*. to 50*l*., the average amount of the suits brought for the last three years was 1,520,000*l*. yearly. The number of suits brought last year was considerably above the average, being in 1853, 484,000. Now, this was the way to try the uses of the County Courts, and to estimate the extraordinary benefits which had been derived from them:—How many suits had been brought in the Superior Courts before the establishment of the County Courts? 120,000 a year. Since the establishment of these Courts the number had been, of course, lessened considerably (by one-third), and they amounted now to 81,000, instead of 120,000. But now he prayed their lordships to consider what these facts proved. What they absolutely demonstrated was, that there was a complete denial of justice previously to the year 1847, and before the establishment of these Courts; for if 120,000 suits were all that were tried in all the Superior Courts, and if the number tried during the same average of the last six years had been in the County Courts 435,000, you had only to deduct the 120,000 which the Superior Courts would have tried from the 435,000 which were tried in the County Courts, to ascertain what amount of cases were perfectly incapable of being tried before them, and consequently to ascertain in what number of cases there was not only a great failure in, but an entire and complete denial of justice. You had thus 315,000 cases which, but for the County Courts, would not have been tried, and in all of which there would have been a complete denial of justice.<sup>1</sup> Now, it would be a very great mistake to suppose that the number of causes and the sums for which those suits were brought gave anything like an accurate measure of the benefits derived from these Courts. Very much the reverse, for you must

<sup>1</sup> These small debts were previously recoverable in the Courts of Conscience. There was no denial of justice.—*Ed*.

take into account the vast number of cases which were settled without the suit being brought, and which, from the knowledge on the part of the defendants that this Court existed and that suits might be brought into it, were settled without driving their adversaries to the necessity of suits at all. It was, of course, quite impossible to estimate accurately what the amount involved in those cases was, but, no doubt, it was very considerable. There were other indirect advantages derived from the establishment of these Courts—he would not say equal to the direct benefits they conferred, but still of very great importance. He would only mention one. Great improvements in the law had been facilitated by them. His noble and learned friend on the woolsack would hear him out in the assertion he was about to make that he did not think he should have had the least chance of passing that important Bill to which he had the good fortune to obtain the assent of Parliament two or three years ago—he meant the New Evidence Act, admitting parties to give evidence in their own cases, and now completed by the Act of last year—it would have been hopeless to attempt to pass such a Bill but for the experiment which had been made in the County Courts, but that the success of that system demonstrated it ought to be made general. He thought he might venture to enunciate these propositions founded upon the facts which he had laid before their lordships.

“It was too late to think of retracing their steps; that they could not begin to halt in the work of improvement; that they could not dream of restoring the central jurisdiction and abolishing the local jurisdiction; that the system of local jurisdiction was rooted deeply in the affections of the community, and was so intimately connected with their most immediate interests, that the notion of a retrograding movement was out of the question; and that this was now for ever to be considered as a part of our national jurisprudence. For this very reason it became them, it behoved them to lend all manner of attention to the improvement of the system, to introduce all such extensions as might judiciously and safely and upon due deliberation be propounded; and he therefore did hope and trust that the important commission which had now been sitting for the best part of a year upon the consideration of every matter relating to the County Court judicature would be enabled to suggest some very important improvements in this judicature.

“The last of the propositions which he grounded upon the facts he had stated to their lordships was this—that they ought, above all, to endeavour to relieve these Courts from the burden of taxation under which they now laboured. To what extent was this? He should not take the average of the last six years, but he would take the average of the last two years in order to show this; and he found from the same papers, now on their lordships’ table, the average of these last two years the sums

raised by direct taxation for fees. He would not mention, without some comment, the word ‘fees,’ which had apparently given rise to the ridiculous errors made by a portion of the public press in supposing that those who complained of the fees of the County Courts were enemies of those Courts, because those writers seemed to confound the question of fees with the other perquisites of the officers. In talking of fees he meant the Court fees—the taxes imposed by the Government upon the suitors—taxes which were taken in Court, and were certainly taxes upon suitors. Those taxes amounted upon an average of the last two years, 1852 and 1853, yearly to 261,000*l.*; the sums recovered by these Courts and in respect of which these taxes were imposed—these ‘Court fees,’ as they were called, were exacted—were 859,000*l.*; and the sums sued for amounted to less than 1,500,000*l.*, making a percentage of 17½ upon the amount sued for, and 30 per cent. upon the sums actually recovered. By sums recovered he meant those recovered by judgment and those paid in. About 17 per cent. was, therefore, levied in the form of taxes upon suitors in these Courts upon the sums sued for, and 30 per cent. upon the sums recovered. There were differences, of course; in some cases the proportion was less, but, then, in a great many others the proportion was a deal more than 17 per cent.

“He had in his hand three or four bills which had been paid by County Court suitors, and which amply illustrated his position. In one case, where an action had been brought in a metropolitan County Court, the amount sued for was 17*l.* 8*s.* 9*d.*; here the taxes of which he spoke—the Court fees—were 4*l.* 18*s.* 4*d.*, being pretty nearly the 30 per cent. he had mentioned. In that case the attorney’s bill, comprehending the whole profits of the professional man, was 2*l.* 16*s.* 8*d.*,—that was to say, the professional man, for all his pains and cost and skill and labour, received 2*l.* 16*s.* 8*d.*, while the Treasury, in consideration of none of these things, but merely as taxes, received 4*l.* 18*s.* 4*d.*, or nearly double what the attorney received. In the next case the per centage was still more; that was a case in one of the Courts in London—one of the city Courts; the sum sued for was 14*l.* 3*s.* 6*d.*; the Court fees were 7*l.* 5*s.* 9*d.*, being 51½ per cent. In a third case, in a Herefordshire County Court, the amount sued for was 18*l.*; the Court fees there were 10*l.* 11*s.* 14*d.*, being 55 per cent. on the sum sued for. In another, the crowning case of those he should cite, an action was brought in a Kent County Court—an action for trespass brought under the optional clause by the consent of both parties; here the sum sued for was 5*l.* How much did their lordships suppose the Treasury had mulcted the suitor of in this case by way of taxes, of Court fees—independently of all professional remuneration, of all other expenses in other respects? Not 30 per cent., not 51 per cent., not 55 per cent., but 150 per cent., and more than 150 per cent.! Upon this sum of 5*l.* the Court fees exacted were no

less than 8*l.* 6*s.* 6*d.*—more, considerably more, than 150 per cent. He had not had access to the particulars of these bills, except in two instances; but in these two instances he had seen the bills, and he had submitted them to one of the officers of these Courts best acquainted with the subject, who would have corrected them at once had they been erroneous. His report, however, was, that the fees exacted by the officer of the Court were correctly and truly due, that he had no choice but to exact them, that for the work done, for the steps had in the proceedings, the fees charged were due, under the Act of Parliament, and that the officer was not merely right in demanding them, but would have omitted his duty had he not exacted them from the suitor. He concluded, therefore, that the charges made for taxes on the other two bills of which he had spoken were truly due."

Now it must not be forgotten, in considering these statistics, that before the present County Courts commenced their operations in 1847, there were several hundred local Courts, many of which had an unlimited jurisdiction as to pecuniary amount;—that many of the Courts of Request possessed a jurisdiction up to 15*l.*, a large number to 10*l.*, and almost all the rest to 5*l.* When, therefore, we are considering the number of actions in the County Courts, as compared with those in the Superior Courts, we must not suppose that the County Courts afford a remedy where previously there was none. On the contrary, we believe it will be found that the number of summonses issued in the Courts of Request was equal to the plaints in the new County Courts. Besides which there were various Borough Courts, Sheriffs' Courts, and old County Courts, in which numerous actions were brought and cheaply and expeditiously concluded. It is a mistake therefore to suppose that the County Courts afford a remedy for the non-payment of small debts which previously could only be recovered in the Superior Courts.

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

ANNUAL REPORT OF THE COMMITTEE OF  
MANAGEMENT.

April 29th, 1854.

[Concluded from page 164, ante.]

*Bills before Parliament.*—Among the Bills that have been introduced into Parliament this Session, the following are of sufficient importance to be here noticed:—

The *Second Common Law Procedure Bill*, which has been introduced by the Lord Chancellor, and referred to a Select Committee.

Like the first Common Law Procedure Bill, this Bill is the result of the labours of the Common Law Commissioners; it consists of one hundred sections, which contain a large number of provisions of great importance, and some of startling novelty.

By the consent of the parties, juries may be dispensed with, and questions of fact left to the Judge.

The qualification of jurors is to be raised to an assessment of 30*l.*, and jurors are to be chosen indiscriminately from persons hitherto qualified as special and common jurors. If any jury cannot agree to a verdict after 12 hours, they are to be discharged. Counsel on either side at a trial are to be allowed, after producing their evidence, to comment upon it to the jury.

Documents need not be proved by the attesting witness, except where attestation is requisite to give validity to the documents.

The practice of attachment, according to the custom of the City of London, is to be made universal.

Pleadings upon equitable grounds are to be allowed.

Your Committee have referred this Bill to the consideration of a sub-Committee, and will embody in a petition such observations and suggestions as may appear, after careful examination, to be necessary.

A Bill for preventing frauds upon creditors by secret *bills of sale* of personal chattels, which proposes to make void as against assignees in bankruptcy or insolvency, and as against any execution, all bills of sale not registered within 21 days of their execution, has been passed by the House of Lords, and sent to the Commons. This Bill was drawn by a member of this Association, and the Committee believe that it is well calculated to effect its object. Its effect will not be to interfere with legitimate credit, but to render more clear the difference between credit and actual property. Another Bill having the same object is the Bill to permit the *Registration of dishonoured Bills of Exchange* and Promissory Notes in England, and to allow execution thereon. This Bill has been introduced by Lord Brougham, and it is accompanied by a paper explaining that it only seeks to extend to England a form of proceeding which has been long known to the Scotch Law under the name of Summary Diligence. There appears little doubt that it will be passed.

Lord Brougham has also introduced a Bill to amend the Law of *Arbitration*, the provisions of which are for the most part similar to the Arbitration Clauses of the second Common Law Procedure Bill; and it is probable, therefore, that this Bill will not be proceeded with, or that those clauses will be withdrawn.

Lord Brougham has also introduced another Bill, to extend to England a portion of the Law of Scotland, under the title of "An Act for giving a remedy by way of *Declaratory Suit*." This Bill provides that persons apprehending an intention in other persons to dispute their rights, may file a bill in Chancery

against them for the purpose of having those rights judicially declared.

In the House of Commons, among the Law Bills, is one to consolidate and render permanent the Law of *Friendly Societies*. It is obvious that the amount of property which has been dealt with under these hitherto temporary Acts renders this measure very desirable.

Another Bill has been brought in by Mr. J. G. Phillimore and Mr. Hume, to provide for the appointment of *Public Prosecutors*. This Bill, however, has been postponed for the present, upon an intimation that Government have it in contemplation themselves to introduce a measure upon the subject. The matter is one of much difficulty, and will require the careful attention of your Committee, who do not think that it is likely to improve the administration of justice if it should be proposed to compel parties who are driven to seek redress in the Criminal Courts, to entrust their interests to public officers not selected by, or responsible to, them. Your Committee believe, that the interests of suitors will generally be best consulted by measures which tend to raise the character and position of the whole Profession, and then by leaving the public to select for themselves their own professional advisers.

A Bill has been brought into the House of Commons to substitute *Declaration for Oaths* in certain cases. The object of this Bill is also met by some of the clauses of the second Common Law Procedure Act, and it is not probable, therefore, that both will be passed.

A Bill has been brought in to enable *execution* to issue in any part of the United Kingdom under a judgment obtained in any Court in England, Scotland, or Ireland. This Bill is substantially the same as one which was prepared three years ago by your Committee, and placed in the hands of Lord Lyndhurst, by whom, however, the matter was not pressed.

A Bill has been brought in to amend the Laws regarding actions for *Criminal Conversation*, and the protection of women in such actions. It does not appear likely that this Bill will be opposed, and it will remove what has long been felt to be a disgrace to our judicial system.

Altogether, up to the present time, 68 Law Bills have been introduced into Parliament—20 in the House of Lords, and 48 in the House of Commons; and it is probable that this number will be very considerably increased before the end of the Session.

The Association at present numbers 903 members, of whom 239 are metropolitan, and 664 provincial. There are 142 life members, and 761 annual subscribers. During the year, including arrears, 516 subscriptions have been received. The total income has amounted to £631. 16s. 3d., and the expenses, including liabilities, to 499l. 10s. 1d.

## LAW UNION INSURANCE COMPANY.

*Bristol Law Library, June 24, 1854.*

AT a meeting of Members of the Profession of this City, held this day for the purpose of receiving a Deputation from the Law Union Fire and Life Insurance Company, Mr. D. Burges in the Chair, it was unanimously resolved—

“That it appears to this meeting, after having heard the explanation of the Directors of the Law Union Fire and Life Insurance Company, that the proposed arrangements of the company with respect to the legal business of the office are equitable and deserve the consideration of the Profession.”

Signed on behalf of the Meeting,

“DANIEL BURGESS.”

The gentlemen present at the above meeting were :—

James Parker, Esq., Vice-Chairman of the Law Union, and Mr. Durrant, the Solicitor, attended as a Deputation.

Daniel Burges, sen., Chairman of Meeting, late Town Clerk and father of the present Town Clerk, and Chairman of the Bristol Law Association.

H. Sidney Wasbrough, Esq., Secretary of the Bristol Law Association.

W. O. Hare, Esq., Clerk of Peace and Deputy-Sheriff.

F. R. Ward, Esq., Local Director of Law Union.

Alfred Brittan, Esq. F. V. Jacques, Esq.

Thomas Danger, Esq. Chas. Bevan, Esq.

G. L. King, Esq. G. W. Nalder, Esq.

Giles Greville, Esq. Chas. Greville, Esq.

We understand that the Chairman of the meeting and several others signified their approval of the liberal plan of the company by becoming shareholders. It appears that the office is proceeding very prosperously.

## ENFRANCHISEMENT OF COPYHOLDS.

*To the Editor of the Legal Observer.*

SIR,—It is much to be regretted, when questions affecting rights in property, are discussed otherwise than with freedom from passion, prejudice, unfairness and injustice,—but the petition of the copyholders of the Kennington manor appears to me to be chargeable with all those faults.

The tone of the petition generally, and the charge of attempted extortion, shows passion.

The attack on the system of copyholds uni-

versally, because on a single manor inconvenience may be felt under special circumstances, shows *prejudice*.

Quoting the opinion of the Committee, in favour of the entire abolition of copyholds, and keeping back the carefully prepared sixth report of the Commissioners made long subsequently, and in which they recommend the continuance of the tenure with commuted rights, shows *unfairness*.

The attempt to deprive the lord of a portion of the rights to which he is clearly entitled,—subject to which the copyholders took their property, and the extent of which they had ample means of knowing, shows *injustice*.

The petition appears to me to bear so strongly on its face the character I have expressed, that I really cannot refrain from the expression of my opinion; but my object in writing is not to reflect on individuals, but to point out in a plain and business-like way, that the copyholders of the Kennington manor have no just cause for complaint, and that if in certain cases inconvenience has arisen from the amount required for the fine, the inconvenience has arisen solely from a want of a little common sense on the part of the copyholders.

Although manors differ in the extent of the lord's rights, he is in most manors entitled to a fine of two years improved value, payable on death or alienation;—if a single life admitted, with the addition of half such a fine for a second life, a quarter fine for a third life, and so on, where persons are admitted as joint tenants.

The extent of such liability on each manor is well known to the copyholders, and easily ascertainable by any one treating for purchase of copyhold interests.

I assume that the fines on the Kennington manor are of two years' value, though whether they be or be not of that full extent, would be unimportant, the extent being known, and the remedy of the copyholder being very simple if more was asked than the lord was *legally* entitled to.

The extent of liability being therefore known, every prudent man, if dealing with copyhold interests, would make provision for meeting the liabilities as carefully as the owner of a leasehold renewable on the extinction of a life or at fixed periods, would make provision for payment of the renewal fines.

Should any man neglect to do so he would have himself alone to blame if put to unexpected inconvenience when the payment became due.

In the same way the copyholders on the Kennington manor have taken interests in property, subject to known liabilities; they have neglected to make provision for the liabilities, and have themselves alone to blame for the inconvenience to which they may have been subjected, especially as I shall be able to show that they could, with the greatest ease, have provided for the obligations to which they were liable.

To take the leading case, given as an instance

of hardship on the copyholders, in which land worth 60*l.* a year was leased for a long term, built on, and greatly increased in value, and a fine of several hundred pounds demanded on the next admission.

It is not even hinted that the sum claimed was more than the lord was *legally* entitled to, but it is contended that it was hard on the copyholder to have to pay it.

It might be inconvenient, but was not unjust or hard on the copyholder, who, had he possessed common sense, would not have granted a lease for building purposes, well knowing that the annual value would be very greatly increased, and also well knowing that on every change of tenant a fine of two years' improved value would be payable,—without making it one of the terms of the lease that all payments for fines beyond two years' purchase on the rent reserved, should be payable by the lessee.

By adopting that course, the copyholder would only have to pay on the amount of rent payable to him, the lessee might readily calculate the value of the liability he took on himself, and proportionately reduce the amount paid for purchase of his lease; and the lord might receive the amount of his just rights without its being insinuated that he was guilty of extortion.

It may be, however, said by the copyholder that such a stipulation in the lease would reduce the amount he would receive. Of course it would, by the deduction of the value of the lord's interest in the property, but not by a single penny in respect of any interest which fairly belonged to the copyholder.

The view I have taken is not one of a merely theoretical character, but one which I have carried out practically and with the greatest possible ease, with a full protection to the interests of the copyholder, the leaseholder, and the lord.

I have also found no difficulty in giving the leaseholder a due control over the selection of the lives on which the copyhold is to be held.

Even if the land, instead of being leased to one person, is to be divided into lots, the arrangement might be made with ease, safety, and justice to all parties.

June 20, 1854.

FAIR PLAY.

## ORDER ON PETITION TO DELIVER BILL OF COSTS.

THE form of order on a solicitor to deliver his bill of costs, "That the said do within a fortnight after notice hereof deliver to the petitioner a bill of *all such* fees and disbursements *as he claims to be due* in all suits, causes, and other matters of business in which he has been employed as the attorney or solicitor for the petitioner," has been varied by omitting the words in italics.



**CANDIDATES WHO PASSED THE EXAMINATION.***Trinity Term, 1854.*

| <i>Names of Candidates.</i>                  | <i>To whom Articled, Assigned, &amp;c.</i>                                     |
|----------------------------------------------|--------------------------------------------------------------------------------|
| Addison, Thomas Russell . . . . .            | Thomas Hustwick                                                                |
| Barker, Charles Henry, B.A. . . . .          | James Bowker                                                                   |
| Barnett, Horatio Frederick . . . . .         | Thomas Marlow                                                                  |
| Beaumont, Robert . . . . .                   | Charles Clough                                                                 |
| Benbow Clifton . . . . .                     | John Henry Benbow                                                              |
| Brittan, Henry, jun. . . . .                 | Henry Brittan                                                                  |
| Carter, Hanwell Holmes . . . . .             | Charles Harrison Clarke                                                        |
| Charsley, George Allington . . . . .         | Frederick Charsley                                                             |
| Christie, John . . . . .                     | Richard Eckroyd Payne                                                          |
| Clough, James . . . . .                      | William Clough                                                                 |
| Cockeram, William Philip . . . . .           | Henry Reade Hodding                                                            |
| Cooper, Robert . . . . .                     | Arthur Dalrymple                                                               |
| Crawford, Thomas . . . . .                   | Lietch and Kewney                                                              |
| Croome, Alexander Swayne . . . . .           | John Starnier                                                                  |
| Davies, George Thomas . . . . .              | William Dewes                                                                  |
| Dorman, Thomas . . . . .                     | James Crosby                                                                   |
| Ensor, Thomas Henry . . . . .                | Alexander Cuthbertson                                                          |
| Floyd, Cookson Stephenson, jun. . . . .      | Cookson Stephenson Floyd, sen.                                                 |
| Fowden, Matthew . . . . .                    | John Worthington                                                               |
| Gething, Henry . . . . .                     | Frederic Malim                                                                 |
| Harris, James Raymond . . . . .              | John Kelly                                                                     |
| Hayward, Charles . . . . .                   | Alfred Hayward                                                                 |
| Head, John Henry Horsford . . . . .          | Robert Thomas Head                                                             |
| Hele, Thomas Shirley . . . . .               | John Chappell Tozer                                                            |
| Hernamaun, John Richard Mills . . . . .      | John Stogdon                                                                   |
| Hill, Stephen, jun. . . . .                  | Stephen Hill, sen.                                                             |
| Hopkins, John . . . . .                      | Edwin Eugene Whitaker                                                          |
| Jackaman, William Batley . . . . .           | Simon Batley Jackuman                                                          |
| Kay, John Dunning . . . . .                  | Joseph Dunning                                                                 |
| Kirkbank, John . . . . .                     | George Gill Mounsey ; George Mounsey Gray                                      |
| Lacey, William Manning . . . . .             | Robert Cole                                                                    |
| Lamb, John Workman . . . . .                 | George Lamb                                                                    |
| Lewis, Thomas Smith . . . . .                | Michael Lewis                                                                  |
| Lindus, Henry William . . . . .              | Richard Hare                                                                   |
| Lloyd, William Henry . . . . .               | William John Whyte                                                             |
| Marshall, William . . . . .                  | John Brooks                                                                    |
| Mason, Richard . . . . .                     | William Jacob Hollest                                                          |
| Meriton, Edward Busick . . . . .             | Lee and Pemberton                                                              |
| Monckton, John Braddick . . . . .            | John Monckton                                                                  |
| Moore, Robert . . . . .                      | Nathaniel Cowdry ; Capel Augustus Curwood                                      |
| Mounsey, Robert Heysham . . . . .            | George Gill Mounsey                                                            |
| Mullens, Samuel, L.L.B. . . . .              | George Capes                                                                   |
| Nash, Arthur, B.A. . . . .                   | George Augustus Crowder                                                        |
| Peckham, Robert . . . . .                    | Arthur James Lane ; Joseph Hall ; Joseph Francis Holmes ; Arthur Turner Hewitt |
| Peters, Charles Abbot . . . . .              | George Frederick Peters ; John Miller                                          |
| Phillips, Henry . . . . .                    | Denton, Kinderley, and Domville                                                |
| Piper, John, jun. . . . .                    | Thomas Townend Dibb                                                            |
| Powell, William . . . . .                    | Green and Peters                                                               |
| Ravenor, Nathaniel Graham . . . . .          | George Godby Vincent                                                           |
| Richards, Watkins . . . . .                  | Charles Richards                                                               |
| Richardson, Edward Taylor . . . . .          | John Luke Haigh                                                                |
| Roberts, George Christopher . . . . .        | John Saxelbye                                                                  |
| Roberts, Thomas Vaughan . . . . .            | Thomas Longueville Longueville                                                 |
| Robinson, Richard . . . . .                  | Robert Sewell                                                                  |
| Rodwell, Henry Blyth . . . . .               | Edward Norton ; John Day ; Frederick Browne                                    |
| Safford, Frederick Lawrence Sleath . . . . . | John Frederick Robinson ; Thomas Borrett                                       |
| Sangster, Alexander . . . . .                | John Stevenson ; Robert Shum                                                   |
| Scarborough, Thomas Henry . . . . .          | Frederick Harrison                                                             |
| Serrell, George . . . . .                    | George Pyke                                                                    |
| Sharpe, Samuel Bates . . . . .               | Saml. Johnson Sharpe ; Richd. Newcomb Thompson                                 |
| Simms, Frederick . . . . .                   | George Hodgkinson                                                              |
| Simpson, Benjamin William . . . . .          | Matthew Dobson Lowndes                                                         |
| Smart, Robert Williamson Hunt . . . . .      | John Smart                                                                     |
| Smith, John William . . . . .                | Hilder and Arnold                                                              |
| Smith, John William . . . . .                | John Smith ; Samuel Steward                                                    |
| Stephenson, Thomas . . . . .                 | Appleton Stephenson                                                            |

## Names of Candidates.

Stuart, William George . . . . .  
 Tibbits, John . . . . .  
 Towne, Eldon Ethelbert . . . . .  
 Tugwell, James Edward . . . . .  
 Waller, William . . . . .  
 Wilford, John Charles . . . . .  
 Wingfield, Henry George Eden . . . . .  
 Woodward, John Hawkes . . . . .  
 Woolcombe, William John . . . . .

## To whom Articled, Assigned, &amp;c.

William Stuart  
 William Tibbits; William Woodruffe Kearsey  
 Richd. Baverstock Browne Cobbett; Josiah Towne  
 William Edmund Tugwell; Alexander Meek  
 William Bromley  
 Richard Bowes  
 Jonathan Weymouth  
 William Wilton Woodward  
 Charles Kitson

## LAW OF ATTORNEYS AND SOLICITORS.

## EMPLOYMENT OF SOLICITOR BY MARRIED WOMAN.—“PARTY CHARGEABLE.”—LIEN ON SEPARATE ESTATE.

A MARRIED woman, upon requesting the plaintiffs to act as her solicitors in certain matters, had given the following memorandum: “And in consideration of your so acting as my solicitors, I hereby charge upon and will pay from my separate estate, your former and future bills of costs, and the bills of costs of Mr. Waugh alone against me, in respect of these and other causes and matters, together with interest at 5l. per cent. per annum on those already incurred from this date, and upon those which may be incurred, from the end of every year, in which the business charged for may be performed.” She afterwards obtained the common order for the delivery and taxation of the plaintiffs’ bills of costs, on a petition presented without a next friend, together with an order that no proceedings at law or otherwise be commenced against her in respect of such bill pending the reference. The plaintiffs, after delivery of their bills, but on which no taxation had taken place, filed a claim to enforce their lien under the memorandum.

The *Master of the Rolls* said, “I am of opinion that the 38th section of the 6 & 7 Vict. c. 73, does not apply to this case, but to a case in which the person making the application for an order to tax, is not himself the person employing the solicitor. Nor has the 39th section any bearing on the present case. As to the 37th section, it does not indeed apply to a married woman personally, because she is not a ‘party chargeable’ in that sense; but it does apply to her, when, as in this case, she has given an undertaking to pay the costs out of her separate estate, and her separate estate is therefore chargeable. This is laid down in *Murray v. Barlee*, 2 Myl. & K. 209; 7 Sim. 194. I think, therefore, that the 37th section does apply to a married woman, whose separate

estate is chargeable; and if so, that section puts an end to the whole matter, for it prohibits the solicitor from commencing any action or suit till one month after delivery of the bill; and after it has been delivered and referred for taxation, it restrains him from taking proceedings pending the reference. At first, I thought this was a claim simply to establish the plaintiffs’ lien for their costs, as against the separate estate; and, regarding it in that light, I might have directed it to stand over until after the taxation had been completed and the sum due to the plaintiffs had been ascertained, but I am of opinion that the claim goes further, and ought not therefore to have been filed at all. It must consequently be dismissed with costs, but without prejudice to any proceeding which the plaintiffs may be advised to institute, after the amount of their bill of costs shall have been ascertained on taxation.” *Waugh v. Waddell*, 16 Beav. 521.

## SELECTIONS FROM CORRESPONDENCE.

## PRIVILEGES OF THE PROFESSION.

AN attempt was recently made by the Barber’s Company of the city of London to compel a gentleman, who was a liveryman of the Barber’s Company, to act as one of the assistants on the court of master wardens and court of assistants of that company. He was threatened to be fined whether he thought fit to accept the office or not. It was in vain to point out to their worship the absurdity of fining a man for accepting office,—such they alleged was the *custom*. At length the gentleman pleaded that he was a *chief clerk* in Chancery, and the exemption was allowed.

CIVIS.

## COPYHOLD.—FORFEITURE FOR NON-REPAIR.

A. holds a copyhold house, which is suffered to go out of repair. The fact is presented at a Customary Court by the homage, and the bailiff is ordered to seize the tenement for the lord. Is such seizure lawful, or is it incumbent on the lord to commence an ejectment for the forfeiture?

A COPYHOLDER.

**NEW ORDER IN CHANCERY.****CLOSING OF ACCOUNTANT-GENERAL'S OFFICE.**

WHEREAS it is proper that the accounts kept by the Accountant-General of this Court should be examined and compared in order to settle the same; and whereas, it will require considerable time to perfect such examination, and it is necessary that a time should be appointed for closing the books of account of the said Accountant-General for the purposes aforesaid, his Lordship doth order that the books of the said Accountant-General be closed from and after Saturday the 19th day of August next, to Saturday the 28th day of October next inclusive, excepting upon the days and for the purposes hereinafter mentioned, in order to adjust the accounts of the suitors with the books kept at the bank; and that during that time no draft for any money, except as hereinafter provided, or certificate for any effects under the care and direction of this Court be signed or delivered out by the said Accountant-General, or any stocks or annuities accepted or transferred by him relating to the suitors of this Court. And that no purchase, sale, or transfer be made by the said Accountant-General, unless the order, request, or registrar's certificate be left at his office, on or before Thursday the 10th day of August next. And that no order for the payment of any money out of Court, which may be then in Court, be received at the Accountant-General's office after Saturday the 12th day of August next. Provided, nevertheless, that the office of the said Accountant-General shall be open on Monday the 16th, Tuesday the 17th, and Wednesday the 18th days of October next, for the delivery out of any regular interest drafts which shall have become payable in respect of the October dividends, and of any other regular interest drafts which shall have become payable during the closing of the office as aforesaid.

June 30, 1854.

CRANWORTH, C.

**LONDON COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.**

Booty, John Gillam, 1, Raymond Buildings.  
 Berkeley, Charles, 52, Lincoln's Inn Fields.  
 Bedford, Henry, 1, Park Villas West, Regent's Park.  
 Bullock, Joseph Billingsley, 51, Lincoln's Inn Fields.

Campbell, Thomas Carington, 21, Essex St., Strand.  
 Cattara, Richard, 33, Mark Lane.  
 Cocker, Alfred Richard, 23, Gower Street, Bedford Square.  
 Depree, Charles Templer, 9, Laurence Lane, Cheapside, and 12, Bloomsbury Square.  
 Dalston, Jonathan Norman, 161, Piccadilly.  
 Goode, Philip, 44, Howland Street, Fitzroy Sq.; and of Lampton House near Hounslow.  
 Humphreys, John, 33, Spital Square.  
 Howard, Jonathan, 141, Fenchurch St.  
 Kelly, Edward Robert, Boswell Court, Lincoln's Inn.  
 Kingsford, James, 23, Essex St. Strand.  
 Marriott, Thomas Lechmere, 1, Lancaster Place Strand.  
 Miller, Ingleby Thomas, jun., 78, King William Street, City.  
 Osborne, John Francis, 23, Red Lion Sq., and 7, St. Ann's Villas, Notting Hill.  
 Strangways, Thomas Hen., 11, King's Road, Bedford Row, and 28, New Broad St.  
 Surman, William Harry, 11, New Square.  
 Wight, Thomas, 13, Russell Place, Fitzroy Square.  
 Watts, Thomas, 7, Old Jewry, City.  
 Young, Wm. Samuel, 30, Parliament Street, and 1, Vauxhall Bridge Road, Westminster.

**BANKRUPTCY BILL.**

A NEW Bill has just been brought in by the Lord Chancellor to regulate appointments in the Court and amend the Law of Bankruptcy. This measure has been rendered necessary by the diminution of the business in the Court. Vacancies which have occurred in the offices of Commissioners for the Birmingham and Bristol districts and of a Registrar for the Bristol district have not been filled up. The Bill authorises the Lord Chancellor to regulate the establishment on the occurrence of future vacancies. The Bill also provides for discontinuing the appointment of brokers, and regulating the remuneration of Official Assignees. The trader petitioning must show assets to the amount of 150*l.*, and the time for disputing the bankruptcy is extended from 21 days to two months.

**NORWICH BOROUGH COURT.**

It was this day (3rd July) ordered by her Majesty in Council, that within one month after such order shall have been published in the *London Gazette*, the provisions of the Common Law Procedure Act, 1853, and the rules made and to be made in pursuance thereof, except sections 97, 98, and 120 of the said Act, rules 57, 81 to 111 both inclusive, 115 to 117 both inclusive, 123 to 134

both inclusive, 173 and 175 and except such parts of the said Act as relate to special juries, terms, and pleadings between the 10th day of August and the 24th day of October in any year, shall apply to the Court of Record of the city of Norwich and county of the said city, called the Guildhall Court.—From the *London Gazette* of 4th July.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lord Chancellor.

*Morritt v. Walton.* July 1, 1854.

ENTERING APPEARANCE WHERE MORE THAN THREE DEFENDANTS. — SOLICITORS' COSTS.

*Held, that the 5th Order of October 23, 1853, which directs that solicitors are entitled to charge and be allowed 6s. 8d. for entering an appearance for every additional number of defendants not exceeding three, where there are more than three defendants, applies to suits originating by bill as well as by summons at Chambers.*

By the 5th Order of October 23, 1853, under the Masters' Abolition Act, 15 & 16 Vict. c. 80, "Solicitors are entitled to charge and be allowed for entering the appearance for one or more defendants, if not exceeding three, 6s. 8d.," and "if exceeding three, for every additional number not exceeding three an additional sum of 6s. 8d." It appeared that in this supplemental bill there were sixteen defendants, and that the solicitor had entered one appearance for the whole, and that on the taxation of costs the Taxing Master refused to allow more than 6s. 8d. on the ground that the orders only referred to proceedings originating by summons in Chambers.

*Smythe* now applied for the direction of the Court on the question.

The Lord Chancellor said, that 6s. 8d. ought to be allowed for every three appearances in the same manner as on claims.

### Master of the Rolls.

*In re William Henry Barber.* July 1, 1854.

SOLICITOR.—PETITION FOR LEAVE TO RE-NEW CERTIFICATE.—JURISDICTION.

*The application of an attorney for leave to renew his certificate had been refused by the Court of Queen's Bench: Held, that the Master of the Rolls will not entertain a similar application on the merits, although upon fresh evidence.*

THIS was a petition under the 6 & 7 Vict. c. 73, s. 25, on behalf of Mr. William Henry Barber for an order that the Registrar of Attorneys and Solicitors should grant a certificate that Mr. Barber was a solicitor of this Court, and entitled to take out from the Commissioners of Inland Revenue a stamped certificate authorising him to practise as a solicitor of this Court. It appeared that Mr. Barber was admitted on the roll in Easter Term, 1836, and had taken out his certificate of practice until December, 1843, when he ceased to renew the same upon his apprehension on a charge

of being an accomplice in certain bank forgeries.

*R. Palmer, Welford, and Rosburgh* in support.

*Selwyn*, on behalf of the Incorporated Law Society, took a preliminary objection, on the ground that almost all the points raised by the petition had been before the Court of Queen's Bench on two separate occasions, when the whole question was fully gone into and argued, and that if there were any new facts or fresh evidence adduced, the application should be made to the Court of Queen's Bench, citing *ex parte Wetherell*, 2 De G. M'N. & G. 359.

The Master of the Rolls said, that the objection was an insuperable one which could not be got over, and which he felt when he first read the petition. The practice of this Court had always been to require, upon the application to be restored to the roll of solicitors that the application should be made first to one of the Common Law Courts; and no instance was to be found of a person who had been restored to the roll of solicitors without having previously been restored to the roll of one of the Common Law Courts. The Court was now asked to depart from this rule which it had adopted, and in a case where two applications had been made to the Court of Queen's Bench, and been refused by that Court. The words of the Lord Chief Justice saying, "This is our final decision," could not certainly be understood to mean that this was a case in which, under no circumstances could the matter be brought again before that Court for their consideration. If those words were so treated, it was clear that, assuming the judgment of this Court to be in favour of Mr. Barber, the same observation would apply upon new matter to be considered. It was attempted to be brought before this Court, upon the allegation of fresh evidence of a very material and important character, which was not before the Court of Queen's Bench. The judgment upon that evidence might or might not have any force or weight with the Court of Queen's Bench, but it was obvious that it ought not to have any weight with that Court otherwise than they should think the evidence was fairly entitled to produce. There was not the slightest doubt that both the Court of Queen's Bench and the other Courts in Westminster Hall would reconsider the case of Mr. Barber, if it were brought before them upon evidence which was not before them upon the occasion of the previous decisions. The present application was

<sup>1</sup> July 6, 1850 (reported *ante*, vol. 40, p. 218), and June 4, 1851 (reported *ante*, vol. 42, p. 101).

to rehear the case which was before, the Court of Queen's Bench. It was not an appeal, because it was not upon the same evidence; but to rehear it would produce very serious inconveniences; and the observations which Mr. Selwyn read from the judgment of Lord Cranworth applied to cases of this description. It would be a very serious inconvenience that one Court should be allowed to decide upon a matter which had been tried before another Court, or that when one Court had pronounced its decision that the same case should be brought again before another Court upon either the same or additional materials, in order to try to get a different decision upon the subject. It was true this existed in the case of a writ of *habeas corpus*, but the inconveniences which might arise in that case had been very obvious in various instances, although it must be admitted that the liberty of the subject afforded some exception. But even in Chancery the great inconveniences, arising from attempts to get the decision of one Court at variance with the decision of another Court, had been experienced. His Honour said he had felt from the first an inclination to view this case as favourably and as leniently as he could, and had been impressed with the circumstance of a free pardon having been granted by the Crown to this gentleman, but it was not possible for this Court, even if the case had not been heard before any Court at all, and the application had been made here in the first instance, to have interfered, unless an application had been made to one of the Common Law Courts, to allow him to take out his certificate—that in substance being perfectly analogous to the case of restoring him to the roll, because, although the form of application was different, the application and the evidence were of the same character. This applied still more strongly in a case where the application had been previously refused by one of the Common Law Courts, and the objection, therefore, must be allowed to prevail. The petition would accordingly stand over, and Mr. Barber be allowed to make such application as he might think fit.

*Du Hourmelin v. Sheldon.* July 3, 1854.

**MARRIED WOMAN.—CODICIL CONFIRMING INOPERATIVE DEVISE IN WILL, EFFECT OF.**

*A married woman, by a will, devised property over which she had a power of appointment, and also other property over which the power did not extend: Held, that a codicil, although executed after the death of her husband, and confirming her previous wills, did not give effect to the inoperative devise of the property over which the testatrix had no power of appointment.*

THE testatrix, Mrs. Elizabeth Sheldon, by her will, dated in 1824, in pursuance of a testamentary power of appointment, devised certain leasehold and copyhold lands, held under the dean and canons of Worcester, and also all other hereditaments she had any power to

appoint, in trust for her daughters. In Nov., 1829, and after her husband's death, she made a codicil, whereby she confirmed all wills she had theretofore made. It appeared that in the will made during her coverture was included certain property to which the power of appointment did not extend, and the question now raised was, whether it passed under the codicil.

*Roupell, Lloyd, R. Palmer, Smythe, Fleming, Shee, Hanson, Roche,* appeared for the several parties.

The *Master of the Rolls* said, that the codicil could not be held to confirm the bequests in the will, which were invalid, and that there was therefore an intestacy as to the portion not included in the power of appointment.

**Vice-Chancellor Kindersley.**

*Jenkyns v. Robertson.* June 10, 1854.

**PRINCIPAL AND SURETY.—EFFECT OF DECREE IN CREDITORS' SUIT AGAINST SURETY.—DISCHARGE.**

*The decree against the estate of the surety to a bond included as a specialty creditor, G. N., who after such decree sued the principal debtor, and arranged to take a judgment for payment by instalments, but without the knowledge of the surety: Held, that the estate of the surety was nevertheless not discharged.*

IN this creditors' suit it appeared that the decree included Mr. George Nicholson as a specialty creditor against the estate of the testator Mr. James Robertson as surety in a bond, and that after such decree Mr. Nicholson had brought an action against the principal debtor, and had arranged to take a judgment for payment of the debt by instalments, but without the knowledge of the surety. The question was raised whether this did not discharge the surety.

*Speed and Greene* appeared for the several parties.

The *Vice-Chancellor* said, that the creditor had by the decree established his right against the estate of the surety, who was no longer liable as surety but under the decree, and the proceedings against the principal debtor was in the nature of executing such decree, and would not operate to discharge the surety.

*Welch v. Cole.* June 30, 1854.

**TRUSTEES' EXTENSION ACT, 1852.—VESTING ORDER.—SALE UNDER DECREE.—BARRING DOWER.**

*An order was made under the 15 & 16 Vict. c. 55, s. 1, vesting the legal estate in certain property sold under a decree in the purchasers where the defendants (the vendors) had passively refused to carry out the decree by executing a conveyance, but held that the order could not be made so as to bar dower.*

THIS was a petition under the 15 & 16

Vict. c. 55, s. 1,<sup>1</sup> for an order vesting the legal estate in certain property sold under a decree in the purchasers. It appeared that the defendants (the vendors) had not appeared at the hearing and had passively refused to carry out the decree and execute a conveyance.

*Kinglake*, in support, asked that the vesting order might be so as to bar dower.

The *Vice-Chancellor*, in making the order with the exception of so much as related to barring the dower, said, that although it was usual in conveyances to provide against dower, yet in taking under a vesting order only such estate and interest passed as the party originally holding possessed, and there was nothing here to show that dower had ever been barred.

#### *Vice-Chancellor Stuart.*

*In re Wimbledon and Croydon Railway Act, 1853, ex parte Archbishop of Canterbury.* June 30, 1854.

RAILWAY COMPANY TAKING LANDS BELONGING TO SEE.—ORDER ON PETITION OF ARCHBISHOP FOR INVESTMENT, &c.,

*Upon certain land belonging to the see of Canterbury being taken by a railway company, and which was let on leases renewable upon payment of a fine, an order was made on the petition of the Archbishop for the investment of the purchase-money, and payment into Court to the account of the railway company and the Archbishop, and for payment of a portion of the dividends equal to the reserved rent to the Archbishop, with leave to apply on the fines being payable at the expiration of the leases.*

It appeared that the above railway company had taken under their Act, certain land belonging to the see of Canterbury, and let on leases, renewable upon payment of a fine.

<sup>1</sup> Which enacts, that "when any decree or order shall have been made by any Court of Equity directing the sale of any lands for any purpose whatever, every person seised or possessed of such land, or entitled to a contingent right therein, being a party to the suit or proceeding in which such decree or order shall have been made, and bound thereby, or being otherwise bound by such decree or order, shall be deemed to be so seised or possessed or entitled (as the case may be), upon a trust within the meaning of the Trustee Act, 1850; and in every such case it shall be lawful for the Court of Chancery, if the said Court shall think it expedient for the purpose of carrying such sale into effect, to make an order vesting such lands or any part thereof, for such estate as the Court shall think fit, either in any purchaser or in such other person as the Court shall direct; and every such order shall have the same effect as if such person so seised or possessed or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of such lands for such estate."

*Wigram*, for the Archbishop, in support of this petition, for the investment of the purchase-money, and payment into Court to the account of the railway company and the Archbishop, and for payment to the Archbishop of such portion of the dividends as might equal the reserved rent, and for the re-investment of the residue, with liberty to the Archbishop to apply, upon the expiration of the leases and when the fines became payable.

*Bovill* for the railway company.

The *Vice-Chancellor* made the order as prayed.

#### *Vice-Chancellor Wood.*

*In re Holdsworth's Trusts.* July 1, 1854.

TENANT FOR LIFE.—PAYMENT OF DIVIDENDS ON FUND IN COURT TO.—INQUIRIES.

*An order was made on the petition of the tenant for life of a fund in Court for payment of the dividends thereon to her for life, without inquiry, although it was suggested by the trustees that the petitioner was a professed nun, and resident at a convent in Dublin.*

THIS was a petition on behalf of the tenant for life of a fund in Court for payment of the dividends thereon to her for life.

*Amphlett* in support.

*Baggallay*, for the trustees, submitted whether further evidence should not be required, as the petitioner was a professed nun residing in a convent at Dublin.

The *Vice-Chancellor* said, that the solicitor presenting the petition would be presumed to have proper authority, as he did so on his own responsibility, and made the order as asked without an inquiry.

#### *Court of Queen's Bench.*

*Pindar v. Barr.* June 19, 30, 1854.

CHURCH DISCIPLINE ACT.—SUSPENSION OF VICAR.—RIGHT OF APPOINTING PARISH CLERK.

*The vicar of a parish was suspended under the 3 & 4 Vict. c. 86, and the stipendiary curate nominated to do the duty had appointed the plaintiff to the office of parish clerk which had become vacant during such suspension: Held, that the plaintiff was duly appointed under the 91st canon by "the minister for the time being," and was entitled to recover the fees received by the defendant, who had obtained his appointment from the suspended vicar.*

THIS was a rule nisi, obtained on April 24 last, to set aside a nonsuit and enter the verdict for the plaintiff in this action, which was brought to recover the amount of certain fees due to the parish clerk of the parish of North Frodingham, Yorkshire East Riding, and received by the defendant. It appeared that on the suspension of the vicar, the Rev. Mr.

tering protested bills, and issuing rapid execution up to 50*l*. We beg to inquire how the provisions of the Act can possibly be carried into effect by a Judge who has to hold Courts at a dozen towns every month? In London a Judge is sitting every day, and before him applications can be readily made within the six days; but suppose a bill registered at York, and in a day or two the Judge is at Ripon, is the debtor to follow him, in order to obtain a hearing on a summons to stay execution till a point of law be argued or a question of fact tried before a jury? or are all defences on bills and notes not exceeding 50*l*., to be excluded? We understand, indeed, that several of the County Court Judges who are best acquainted with their duties, have been consulted by the authorities who promote the measure, and that, although "nothing loath" to the extension of their jurisdiction, they candidly acknowledge that the County Courts can render no assistance in this new mode of procedure.

The supposition, therefore, that preference was given to town over country practitioners, appears to be unfounded. The County Court clauses, so far as we can learn, were struck out by the promoters of the Bill as impracticable. It must be admitted, however, that at Liverpool and Manchester, where a Judge sits permanently, the case might be different, and at Liverpool, we are informed, the number of bills there payable is very large; but for the most part the bills, though accepted in all parts of the country, are made payable at a London banker's, and the amount remitted through the country correspondent of the house.<sup>1</sup>

All these practical matters require to be weighed and considered in effecting a change such as is contemplated in the Bill before Parliament. It is very inexpedient, if not dangerous, to rush into new legislation without a full knowledge of all the facts and circumstances, and probable consequences connected with the change. There may be many other topics, besides those we have referred to, which require investigation before we adopt the Scotch mode of procedure in this important class of mercantile transactions.

It may be proper to add a list of the pe-

titions which have been presented to Parliament on the subject of this Bill. They are as follow:—

June 23. From the Committee of the Liverpool Guardian Society for the Protection of Trade, in favour of the restoration of the clauses enabling attorneys to protest bills, and to register the protests under the Act in the County Court up to 50*l*.

From the Committee of the Bristol and Clifton Trades' Association, in favour of the Bill.

June 29. From the attorneys and solicitors of Newcastle-on-Tyne and Gateshead, for the restoration of the clauses as to attorneys and the County Courts.

June 30. From the President and Vice-Presidents of the Society of Attorneys and Solicitors of Ireland, against the extension of the Bill to Ireland, and particularly against the 11th clause for the registration of protests in the Courts at Westminster, and against the 15th clause, requiring security as a preliminary step to a defence, and praying for the restoration of the clause, authorising attorneys to note and protest bills.

July 8. From bankers and merchants of Portsmouth, praying that the Bill may pass, but limiting the protest of bills to notaries, and restoring the County Court clause.

From the Lord Mayor, aldermen, and burgesses of Dublin, stating that the provisions of the Bill will inflict great injury on various important interests in Ireland, and praying that the Bill may not be extended to that country.

It will be observed from this list that only one of the numerous Law Societies in England has presented a petition on the subject. The Law Society of Ireland repudiates the Bill altogether, but if it must pass, calls for the restoration of the clause in favour of attorneys. It may be right to mention that the London notaries had no hand in originating the Bill, and we incline to think that they do not care for its passing. It is very doubtful whether they would derive any ultimate advantage from it. The effect would probably be very largely to diminish the number of bills, particularly of that class which, not being provided for at the banker's where they are made payable, are handed over at five o'clock to the notary. Whether this would be counterbalanced by the protests under the Act may be doubtful. We have no expectation that the friends of the notaries in the House will be strenuous supporters of the measure; but if it should be pressed forward by the promoters, we believe the notaries both in town and country will strongly resist the restoration of the clause in favour of the attorneys. We think, therefore, the Bill

<sup>1</sup> It does not appear that the members either for Liverpool or Manchester have as yet opposed the Bill, nor have the Law Societies of either of those places interfered by petition, but there is a petition from the Liverpool Guardian Society.

should be opposed altogether, on the ground that it is unnecessary and inexpedient, and that at all events it must be postponed till the whole Law of Bills of Exchange can be reconsidered, and brought into one general Act.

We adverted in a postscript to our last Number, to the Act of 9 & 10 Wm. 3, c. 17, by which bills may be noted and protested in places where there are no notaries, by "a substantial person," in the presence of two witnesses. We are informed that the notaries are in the habit of sending bills to attorneys in such places, and pay their usual professional charges for noting or protesting; and the notaries contend, therefore, that there would be no failure of means to carry the Act into effect. But surely it would be a most cumbersome and expensive process to require three persons to note and protest a bill when an attorney might, like a notary, do it alone.

## BANKRUPTCY BILL.

THIS Bill, which is brought in by the Lord Chancellor, proposes to enact as follow:—

### 1st. *As to the Officers of the Court.*

The vacancies now existing in the offices of Commissioners for the Birmingham and Bristol districts, and of Registrar for the Bristol district, shall not be filled up unless the Lord Chancellor shall declare that, having regard to the state of the business, the vacancies ought to be filled up; and thereupon they may be filled up, as if this Act had not been passed; (s. 1).

Upon any future vacancy in the office of Commissioner or of registrar in the Birmingham, Bristol, Leeds, Liverpool, or Manchester district, the Lord Chancellor may declare that such vacancies shall not be filled up until further order, and thereupon the same shall not be filled up; (s. 2).

The provisions of the 1 & 2 W. 4, c. 56, s. 9, are repealed, and the chief registrar or any of the registrars of the Court of Bankruptcy, acting either in London or in the country, may be removed upon a certificate from the Lords Justices of the Court of Appeal in Chancery, of some sufficient reason to be named therein for such removal; (s. 3).

Where, upon a vacancy in the office of registrar for a country district, it shall seem to the Lord Chancellor necessary that some person should be appointed to assist the Commissioner, but inexpedient that a permanent appointment should be made, the Lord Chancellor may appoint a fit person to act as registrar until further order, (s. 4); and to receive such remuneration for his services, not exceeding the amount to which he would have been entitled as salary for the same period under a per-

manent appointment as registrar, together with such further sum for his travelling expenses, as the Lord Chancellor may order; (s. 5).

Where a commissioner or registrar, acting either in London or in a country district, is temporarily hindered from discharging his duty by illness or unavoidable absence, the Lord Chancellor may appoint a fit person (who in the case of a commissioner shall be a serjeant or barrister-at-law of seven years' standing) to act in his stead, (s. 6); and also in the case of absence for any reasonable cause, during such period as shall not exceed in the whole the period of two calendar months in any one period of twelve consecutive calendar months, (s. 7); and such serjeant, barrister, or other person shall, while his appointment remains in force, have all the jurisdiction, rights, powers, duties, and authorities belonging to the office of the commissioner or registrar; (s. 8).

No appointment of a messenger or of an usher shall be hereafter made without the sanction of the Lord Chancellor first obtained; (s. 9).

After Sept. 1, 1854, the practice of the Court of nominating brokers to make inventories of the effects of bankrupts shall be discontinued; and the duties now discharged by brokers shall be discharged by the messengers; (s. 10).

Repeal of 5 & 6 Vict. c. 122, s. 76, which enacts that a succeeding Judge, Commissioner, registrar, and deputy registrar shall be paid such proportionate part of their salaries as shall accrue from the day of the resignation, death, or removal from office of the preceding Judge, &c., and of 7 & 8 Vict. c. 96, s. 49, which enacts, that the successor of any registrar or deputy registrar dying, resigning, or being removed, shall be entitled to receive such portion of his salary as shall accrue from the day of such death, resignation, or removal; and the salaries of all Commissioners and other officers of the Court of Bankruptcy to be hereafter appointed shall commence from the time when they shall be appointed; (s. 11).

The Lord Chancellor shall, with the advice of the Lords Justices, by order, direct according to what scale the remuneration of an official assignee for his services shall be calculated; and thereupon the 12 & 13 Vict. c. 106, s. 44, shall be repealed; and the provisions respecting such remuneration contained in the 130th General Order of October 19, 1852, shall remain in force until the same shall be abrogated or varied under this Act; (s. 12).

### 2nd. *As to the Fees.*

The Lord Chancellor may, with the advice of the Lords Justices, vary or abolish the fees payable in relation to any of the proceedings in matters of bankruptcy or arrangement in the Court of Bankruptcy, or the Court of Appeal in Chancery, and fix other fees not higher than by such Act prescribed;



and the provisions of the Act respecting stamps are extended to such stamps as may be required by any order under this Act; (s. 13).

The Lord Chancellor may, with the advice of the Lords Justices, abolish the per-centage under the 12 & 13 Vict. c. 106, s. 54, made payable to the chief registrar's account, or reduce the lowest rate thereof below one-eighth of a pound per cent., and again re-impose, and from time to time regulate and vary the same, but so that the highest rate shall not exceed the highest rate payable by the Act (s. 14); and also fix a maximum sum to be paid in any matter of bankruptcy or arrangement in respect of the fees, stamp duties, percentages, or other charges payable to the chief registrar's account, and raise or lower the same; and when in any matter the total sum paid in respect of such fees, &c., shall amount to the maximum sum fixed (to be ascertained and certified in such manner and by such person as the Lord Chancellor, with the advice aforesaid, may direct), then there shall not be any further fee, &c., payable in relation to the same matter, or any of the proceedings therein to such account; (s. 15).

### 3rd. *As to varying the Rules and Orders of Practice, Costs, &c.*

Repeal of 12 & 13 Vict. c. 106, s. 8, and the Lord Chancellor may, with the advice of the Lords Justices, from time to time by order vary or abrogate the rules and orders in relation to matters of bankruptcy or arrangement, and make and alter or revoke such orders as may seem expedient for the better execution of such Act, and this Act, and for the regulation of the practice in matters of bankruptcy and arrangement, and the form and mode of proceeding before the Court of Bankruptcy and the Court of Appeal, and for the regulation of the duties of the several officers of the Court of Bankruptcy, and the fees, costs, charges, and allowances, as well of solicitors and of messengers and ushers, as also of auctioneers, appraisers, brokers, valuers, and accountants, employed by assignees, messengers, or bankrupts, and for the taxation thereof; (s. 16).

Every declaration of insolvency to be filed on or after September 1, 1854, for the purposes of the Bankrupt Law Consolidation Act, 1849, as altered by the 15 & 16 Vict. c. 77, shall, in lieu of being filed in the office of the chief registrar, be filed in the Court within the district whereof the trader filing the same shall have resided or carried on business for six calendar months next immediately preceding the time of the filing thereof; and the same shall be filed, in the case of the London district, in the office of the chief registrar, and in the case of the country districts with the respective registrars (s. 17); and the filing of such declaration with the registrar of a country district shall have the same effect as the filing thereof in the office of the chief registrar would now have; (s. 18).

The several registrars in the country shall daily transmit by post copies of all declarations of insolvency filed to the chief registrar, who shall on the receipt thereof cause the same to be entered in a book to be kept by him for that purpose (s. 19); and a copy of such declaration purporting to be certified by a registrar of a country district, as a true copy of a declaration filed in the Court for that district, shall be received as evidence of such declaration having been filed; (s. 20).

### 4th. *As to Adjudication of Bankruptcy and amount of Assets.*

If any trader summoned under the 12 & 13 Vict. c. 106, s. 78, shall, upon his appearance, sign an admission in such form as in the said Act mentioned, for part only of the demand in respect of which he shall have been summoned, and shall not within seven days next after the filing of such admission, pay or tender and offer to such creditor the amount so admitted, or secure or compound for the same to the satisfaction of the creditor, every such trader shall be deemed to have committed an act of bankruptcy on the eighth day after the filing of such admission, provided a petition for adjudication of bankruptcy shall be filed against him within two months from the filing of the affidavit on which the summons to such trader shall have issued; (s. 21).

Repeal of 12 & 13 Vict. c. 106, s. 93, from September 1, 1854; and any trader liable to become bankrupt may petition for adjudication of bankruptcy against himself, but unless he shall forthwith, after filing his petition and before adjudication of bankruptcy, make it appear to the satisfaction of the Court that his available estate is sufficient to produce the sum of 150*l.* at the least, his petition shall be dismissed, and no further petition shall be filed by him in the same district, without the leave of the Court first obtained, and the adjudication on any further petition shall be subject to the like condition as to his available estate, and the form of petition for that purpose, specified in Schedule (O) to the Act, shall be altered by the words "produce the sum of 150*l.* at the least" being inserted therein in lieu of the words "pay his creditors at least five shillings in the pound;" (ss. 22, 23).

Proof by a trader petitioning as aforesaid of the sufficiency of his available estate to the extent required by this Act shall have the same effect for all the purposes of the Bankrupt Law Consolidation Act, 1849, as proof to the extent required by that Act would now have for the same purposes; (s. 24).

After the appointment of an official assignee to act in any bankruptcy, and before the choice of assignees by the creditors, the messenger shall follow the instructions of the official assignee, subject to the directions of the Court, with respect to the taking and keeping possession of any part of the bankrupt's estate; (s. 25).

### 5th. *Disputing Adjudication, &c.*

The Bankrupt Law Consolidation Act, 1849,

s. 233, limiting the time within which a person adjudged bankrupt may dispute the adjudication, shall, on or after September 1, 1854, be construed as if the words "two calendar months" were therein inserted in lieu of the words "twenty-one days;" (s. 26).

Every bankrupt shall be entitled to retain such articles of household furniture, and tools, implements of trade, and other like necessities, as he shall specify, not exceeding in the whole the value of 20*l*.; and such excepted articles shall not be subject to be sold or taken in execution at the suit of any creditor; and there shall be filed an inventory of such excepted articles, with a valuation of the same and a certificate by the appraiser, attesting the truth thereof, and stating when and where such articles were valued; and the reasonable expenses and charge of such valuation when taxed shall be paid to the appraiser by the official assignee out of the proceeds of the estate; (s. 27).

*6th. Postponement of Sale of Furniture, &c., and Allowance to Bankrupt.*

The messenger of the Court, upon taking possession of the remainder of the bankrupt's household furniture, tools, and implements of trade, shall make an inventory and valuation thereof, and deliver the same to the official assignee; and where the bankrupt shall, by writing under his hand, request the assignees not to dispose of such household furniture, tools, or implements of trade, the same shall not be disposed of without previous order of the Commissioner; and the Commissioner may, upon the application of the bankrupt, postpone the removal and sale of the same for such time as he shall think fit, having regard to the probable value of the other property of the bankrupt, and may permit the same to remain in the use and occupation of the bankrupt, upon such terms and conditions and with such security as may seem proper, so as to protect the same from being sold for the payment of any rent, rates, or taxes which might become due thereafter, or of any debt, claim, or demand whatsoever; and the Commissioner may, at any time when he shall think it necessary, order the same to be taken by the messenger or assignee, and to be sold for the benefit of the creditors; (s. 28).

If the other effects of the bankrupt shall pay to the creditors such an amount of dividend as shall entitle the bankrupt to an allowance in money, and the household furniture, tools, and implements of trade shall not have been sold, the bankrupt shall accept the same at the valuation originally put on the same, or a sufficient portion thereof, to be selected by him, with the approbation of the assignees, and for his allowance instead of money; and such articles so accepted shall be delivered to, and revert in the bankrupt as his own property, and the official assignee shall sell for the benefit of the creditors such portions as the bankrupt shall not be entitled to retain, and such deduction may be made from his allow-

ance for any diminution in value in such articles, occasioned by his having continued to use them since the bankruptcy, as the Commissioner may think reasonable (to be either paid by the bankrupt in money or the amount thereof in value retained in goods); (s. 29).

This Act shall be construed together with the Bankrupt Law Consolidation Act, 1849, as one Act, and may be cited as "The Bankruptcy Act, 1854;" (s. 30).

**CRIMINAL JUSTICE (METROPOLIS) BILL.**

THIS Bill, which is to commence after November 2 next, proposes to enact as follows:—

Whenever a magistrate shall commit to custody or hold to bail any person for trial at the Central Criminal Court or Session of the Peace, an information shall be filed in lieu of a bill of indictment presented to the grand jury (s. 1); and which shall have the same effect in all respects as an indictment as to trial or otherwise; (s. 2).

No information shall be quashed, nor acquittal taken, by reason that the offence charged differs in its legal definition from the offence specified in the commitment or detainer, or for which the party was held to bail; provided the information apply to some act or offence disclosed or to be inferred from the depositions or from the commitment or recognizance; and provided that the committing magistrate or the Court shall have power to direct an indictment in any case; (s. 3).

No objection shall be allowed to any information, except such as may be made to indictments, and it shall not be necessary in the information or in making up the record to set forth any proceeding before the magistrate; (s. 4).

Nothing in the Act shall extend to authorise any information to be filed in cases of treason or misprision of treason, or offences against the Queen's title, prerogative, person, or government, or against either House of Parliament; (s. 5).

It shall not be necessary to summon a grand jury at every session of the Central Criminal Court, or of the Peace for the metropolitan district, but only at such sessions as the judges and justices or any two of them may think necessary, not being fewer than four sessions in every year; nor at the sessions for London and Southwark unless 16 days before there shall be any business to render the attendance of the jury in the opinion of two justices necessary; (s. 6).

The word "magistrate" and "justice" shall mean every judge, person, or Court having power to commit or hold to bail for trial for any criminal offence.

## CHANCERY PROCEDURE AMENDMENT BILL.

By this Bill, which was introduced by the Solicitor-General on the 10th July, to "Amend the Course of Procedure in the High Court of Chancery," it is proposed that in all cases in which the Court of Chancery has jurisdiction to entertain an application for an injunction against a breach of any covenant, contract or agreement, or against the commission or continuance of any wrongful act, or for the specific performance of any covenant, contract, or agreement, it shall be lawful for the same Court to award damages to the party injured, either in addition to or in substitution for such injunction or specific performance, and such damages may be assessed in such manner as the Court shall direct, and the powers given by the 15 & 16 Vict. c. 86, s. 63, of making general rules and orders, shall extend and apply to the mode in which such damages are to be assessed, and the course of procedure of the Court in relation thereto.

## LIMITED LIABILITY PARTNERSHIPS.

### MR. BRAMWELL'S OPINION.

HAVING in a recent Number (p. 157, *ante*), given the Commissioners' Report against the proposed alteration of the Law with regard to limited liability partnerships, we now lay before our readers the opinion of Mr. Bramwell, one of the Commissioners, who has come to an opposite conclusion. He says—

"The difference of opinion which at present exists and appears likely to continue between the majority of the Commissioners and myself, with relation to any change in the Law of Partnership, has made me think it desirable to state the conclusions at which I have arrived on that subject, and the reasons which have led me to them; as well for the purpose of submitting them to the other Commissioners, as for that of putting them on record for what they are worth.

"We are directed to inquire, 'whether it will be expedient that any and what alteration shall be made in the Law of Partnership, so far as relates to the limited or unlimited liability of partners.'

"This, like all questions involving change in the law, may be divided into two. 1st. What ought to be the law, as an abstract question, unaffected by existing laws, habits, usages, and the inconvenience of change generally? 2nd. How far do these considerations affect the abstract question?

"I will consider them in their order. 1st. Is it desirable to prohibit by law persons from entering into partnership, and to prohibit them and others from dealing together, on the terms that the liability of one or more or all of the partners should be limited? It will perhaps be said, this is not the question, as the law at present has no such prohibition. Theoretically it has not, but practically it has, by its rule, that one partner has presumably authority to bind another to an unlimited extent, and that such presumption cannot be rebutted in trading partnerships, except by proof of notice to the persons dealt with that the terms of partnership are to the contrary. If there were no such rule, and the actual authority given by one partner to another had to be looked to, there would be no difficulty in forming partnerships, and trading with limited liability. The question therefore is, assuming the general rule referred to to be expedient, ought it to be so qualified as not to prohibit such partnerships and trading? It will be observed from this statement of the question, that it is not proposed that any compulsion should be put on any person; only that a restriction should not be imposed. No persons would be compelled to enter into such partnerships,—no one to deal with them,—but all would be left free to do so or not, as suited their own judgments. That this would be so as to the partners is obvious; they would be undoubted volunteers. If those who dealt with them knew the terms of partnership, they would be so likewise; if they did not know, and did not inquire, it would be because they were content not to know: if misinformed, it would be assuredly because they had not inquired of those certain to know, viz., the partners, or had been fraudulently informed by them; a most improbable occurrence,—if legislated for, to be so penally, and moreover one which never need happen, if there were a registry.

"The question therefore is as I have stated, is it expedient that such partnerships should be prohibited? Ought A. and B. to be prohibited from entering into partnership on terms limiting the loss of B., or of both? Ought C. to be prevented from dealing with them on those terms? The burden of proving this is on those who assert it. This is not a technical view. It is desirable in all cases, and in this I believe most important, to see on whom is the burden of proof. For even if we had none of the valuable evidence which has been given to us as to the mischiefs of the present restriction, to my mind it would have required an exceedingly strong case to have established the propriety of the prohibition in question. If ever there was a rule established by reason, authority, and experience, it is that the interest of a community is best consulted by leaving to its members, as far as possible, the unrestrained and unfettered exercise of their own talents and industry. Our modern legislation has been founded on this principle, with the sanction of the immense majority of those whose opinions are of any value. The restraint on

limited liability partnerships offends against this rule; and I frankly own, that, whatever weight is due to the evidence given us I attach more value to the operation of that general principle, the extent of the effects of which no one can foretell, and which has done so much where permitted to act. If A. and B. are desirous of entering into such a partnership, and C. of dealing with them on its terms, why should either of them be called on to give a reason for leave to do so,—beyond this, that they deem it for their interest, and that it is their pleasure to do it, and their will? Who is likely to know better than themselves what will be to their interests? Let the objector make out his objection, and show why they should be prohibited.

"But besides the considerations arising from general principles, a great quantity of most valuable evidence has been furnished to us, which, as far as it goes to show the probable advantages of such partnerships in this country, is indeed speculative, but which, so far as it shows the mischiefs of their prohibition, is most positive and certain. We have also the result of the experience of other countries, comprising the most commercial communities in the world, and the testimony is uniform as to the utility of such partnerships. I say uniform, because no one says that, on the whole, they are found to be objectionable in the countries where they exist, with, I think, one exception; and for the opinion so expressed no reason is given, while it is abundantly contradicted by others more conversant with the facts upon which it is professedly founded.

"As I cannot, however, do justice to the benefits shown to have accrued from such partnerships elsewhere, and expected to result from them here, and to the mischiefs experienced from our prohibition of them, without great length, I must content myself with this general reference to the evidence.

"What, on the other hand, is the character of the testimony the other way? Certain injurious consequences are foretold on the application of the law of limited liability to this country. Of course this kind of evidence is necessarily speculative and theoretical. The witnesses for the most part are gentlemen engaged in commerce. I do not say that to their disparagement. They are persons of the highest position, and I have unqualified confidence in their integrity; but it is reasonable to suppose that their judgments may be somewhat influenced by their natural satisfaction with things as they find them, and a wish they should not be interfered with. It must not be forgotten that there are names of practical men as of great weight on the other side; and the large majority of non-practical witnesses, the indifferent bystanders, writers of renown, and others, are in favour of the suggested change.

"The objections are, that mischiefs would arise from such partnerships,—

"1st. To the members;

"2nd. To those who deal with them;

"3rd. To the public; i.e., all persons not included in the first and second classes.

"I protest entirely against entertaining the first and second of these objections, even supposing them to exist. I will not say the State has no right, because to that expression no determinate idea is annexed; but I do say that it ought not to interfere to prevent, for their own sakes, any persons from entering into any engagement they may be willing to form. There may be real or apparent exceptions to this rule, as where the thing agreed to be done is *malum in se*; but for the purpose of protecting the parties themselves, I say the State ought not to interfere, but to leave every man to the most zealous and best informed of all protectors, himself.

"Before considering the objections raised, it may be remarked that the prophecy of mischief is discredited by the experience of other countries, where the law, which is to cause them here, is to be found; and no reason is given why that law which does not cause them elsewhere, should cause them here.

"Let us, however, consider the suggested mischiefs. It is said, 1st, the partners would enter into rash and hazardous speculations, and lose their money. What does this mean? Enterprises in which the probability of loss is great? But in one sense this is unobjectionable. Every prudent man constantly engages in such. A man pays 1*l.* to receive 1,000*l.*, if his house should be burned. Is it more than 1,000 to 1 that his 1*l.* is lost without any return—that his house is not burned, and that he had better have kept his 1*l.* in his pocket. But does any one call him rash in such an outlay? Is it rash or wrong to venture 1,000*l.* on an enterprise which in nine times in ten fails, if, on the tenth, 20,000*l.* are the return for the 1,000*l.*? Is it rash in A., B., C., and so on to the first ten letters of the alphabet, that each should do this? If so, make a partnership of the same number; let the whole ten do the same thing ten times; by the hypothesis each will have gained 1,000*l.*; and if it was right in the whole to do so, how was it wrong or rash in each? A most hazardous may still be a most wise speculation. The objection, therefore, that great and excessive risks would be run is worthless, unless it means they would be unwisely run; and this it is said they would be—that business would be carried on recklessly and unwisely. Why should this happen? The partner whose liability is limited has his subscribed capital to lose. But it is said that he might be willing to risk it where success would return it twenty times, and failure would simply lose him its amount, and make his partners insolvent. But I say this again supposes either that success is probable, or that it is proportionately improbable. In the latter case it is unwise; in the former it is wise and right. I do not think that any person would enter into a speculation which he thinks unwise, merely because he knows the extent of his loss;—why he should venture a given sum of money on disadvantageous terms, merely because his loss is fixed; terms which, taking the probabilities of success and failure, and the

probable amounts of both, are not an equivalent. I can understand why he should refuse to risk his all on the wisest speculation; viz., because no possible gain could equal the possible loss. *A. B.* has an estate of 1,000*l.* a year. There is every reason to believe that he has a coal mine, which, on an outlay of one 10,000*l.*, would return as much annually. It would be most prudent in him to subscribe 1,000*l.* to the 10,000*l.*, if his liability stopped there; but if, as a consequence of that, he might possibly lose his estate, I can readily understand that he would be right not to do it.

"This shows, it may be said, that there may be more speculative enterprises with a system of limited liability than at present. I admit it, and see no subject of regret in that. The unlimited partner has his capital, if he has any, the use of his partner's, and his own character and position at stake to induce him to be careful. I cannot see that limited liability is likely to lead to unwise speculations; and I think it no objection that it may lead to hazardous, provided they are prudent speculations. But I desire further to say, it does not follow that such speculations would be multiplied. At present they exist, with this difference,—they are now constantly in the hands of rash and dishonest persons, with no capital or character, instead of being in those of prudent and reputable, companies—partnerships—got up, not for the purpose of the speculation, but for the profit of the getting up and of the working of the partnership.

"2nd. The next class that it is supposed to be necessary to take care of is the creditor; he who deals with the partnership. In the first place the creditor would prefer to decide for himself, instead of being taken care of. But if it be thought necessary to protect him in spite of himself, it must be asked, how is he to suffer? What mischief is he to be prevented from running into? Loss from the insolvency of the partnership? But where is there greater chance of insolvency than in unlimited partnerships, if there is no greater chance of unwise trading? It may be said there is in this way: *A.* and *B.* are partners; *A.* has nothing to lose; *B.* subscribes 1,000*l.*; they risk it in an enterprise where it is an even chance whether they lose 10,000*l.* or gain 20,000*l.*; an obviously good speculation. If they win, they gain 9,500*l.* each; if they lose, *B.* loses 1,000*l.*, *A.* nothing, and the creditors 9,500*l.* Here is obviously a prudent speculation for *A.* and *B.*, though most injurious to the creditors. The case is an extreme one, and to the last degree improbable; and, after all, how is the creditor a sufferer, and what just ground of complaint has he? He knows the nature of the speculation, or he does not; if he does, he charges accordingly, and he becomes, in truth, a sharer in the risk. If he does not know its nature, and if he has not inquired, it is his own fault; if he has, and has been misinformed, he is defrauded. In the last case alone can he be justly said to be in-

jured. That, however, is an injury which no law, no restriction, will prevent, but which he could much better guard against if he could refer to some registry, learn the nature of *A.*'s trade, that he traded partly in commandite capital, and to what extent, instead of, as at present, being ignorant of what are *A.*'s business and means, and whether the appearances he makes is with his own or borrowed capital. But then it is said that on the insolvency of the firm the limited partner would be preferred, in fraud of the general creditor; that accounts and alleged profits and losses could be falsely stated. Now every one who has any experience in courts of justice knows that frauds are never long from their origin to their maturity, and it would be always easy to detect any sudden change in the general aspect of the affairs of the partnership. But why should the unlimited partner be guilty of this supposed fraud? Would his inclination or opportunity be greater than under other forms of partnership? He always has himself, often wife, children, relatives, to protect, quite as near to him as his limited partner. His regard, therefore, for the person to be served would be no greater than at present. Then would the opportunity be greater? Are imaginary profits invented now in cases of money borrowed? Do we find that to avoid a charge of fraudulent preference such profits are imagined so as to warrant the repayment? I believe not; and it is to be remembered that such a proceeding, if both parties were privy to it, would be an indictable offence; and certainly it might be most powerfully checked by a provision that it should make the limited a general partner. While on this point I cannot help saying, that, as has been observed, there are dishonest creditors as well as debtors, and that limiting the liability of the latter might tend to the amendment of the former, and prevent the giving of credit, which is at present given in the belief that shareholders unacquainted with the mischief going on will ultimately have to pay for it.

"3rd. The public are to be taken care of. It is said that the competition with unlimited liability partnerships would be unfair on the latter. This is a strange argument to be used by those who say that limited liability partnerships would never be trusted; but I own I cannot understand it. The interest of the public is in unrestricted competition. If limited liability partnerships turn out to be more profitable than others, or can profitably sell at lower rates than others, they are preferable to those others, and the sooner all are on the best footing the better. But the truth is, the objection is imaginary; the experience of other countries show that there will be some of each, as there are now some private and some joint-stock banks. Unlimited liability partnerships will be adopted by those who prefer them, and for purposes for which they are preferable. The limited will be resorted to on similar considerations. If no one finds them preferable for any purposes, they will not be used, and the permission to form them will be nugatory. I

do not believe that that will be the result, but if it were to be anticipated, the experiment should be tried. Because, although I fully feel the inconvenience of changes in the law, I think it due, in the present case, to the authority of those who advocate it, that an opportunity should be afforded of forming these partnerships; it being merely an additional power to that possessed already, and one which nobody need exercise.

"But to be consistent, if there is anything in the first and second objections, why do not similar considerations cause an interference with private partnerships with unlimited liability? Admitting that limited liability will lead to more, it cannot be denied that unlimited will and does lead to some mischiefs. Why are not such partnerships superintended? It may be said, they cannot be reached; they have no favour to ask. That could easily be managed. Prohibit all trade and partnerships except by license, say, from the Board of Trade, and then their proposed proceedings could be reviewed; or tax every proposing trader, as a preliminary to his right of trading; or punish him if he failed. No doubt, such speculation would thereby be somewhat checked. It will be said, the public would not endure it. I agree. Nor if it had once enjoyed the right of forming partnerships with limited liability, would it tolerate that right being denied it. The reason for not interfering in such cases is, that it is felt that persons judge best for themselves. The State, after all, acts by its officers; and they cannot know each man's private interest as well as he does himself; while the interference with private affairs in cases of proposed partnerships with limited liability, and the belief in its utility, exist merely from the opportunity which the law at present affords of exercising it.

"As to the third objection, it is one which in principle is opposed to all the great corporations chartered by the Crown or Parliament. They are, on the principle contended for, all exceptional and wrong. The liability is limited, and they preclude the possibility of competition by private persons. No reason is given for permitting them, that I know, except that without them works executed by them would not be executed at all, while other enterprises are; which is in effect to say that how done is immaterial, provided they are done somehow.

"There is another argument against our adopting limited liability partnerships—that they may do well in a new or poor country, but not in a rich or old one like this. It is said, we have abundance of capital; witness the price of land and of the public funds. It has been well asked, when did this become the case in England? At what period did the desirableness of limited liability partnerships cease with us? I ask, what is the meaning of the expression 'we have abundant capital'? Does it mean we have too much, and should be better off by destroying part, or exactly enough, so that we should be worse off if one pound richer or poorer? Capital is the means

of future earnings; the more capital the more gains by the whole body of the community; the more ways of employing capital, the more ways of making those gains; consequently, I should say we never can have too much of it. And so far from thinking the objection under consideration well founded, the direct opposite of it seems to me to be the truth. I am inclined to think that limited liability partnerships are more desirable in a country where profits are low than where they are high; as where profits are low less inducement exists for saving, and the consequent accumulation and augmentation of the wealth of the community, than where they are high. The argument is, we do well enough, and so need not do better.

"There is another objection, which appeals more to the ear than the understanding. When stated with precision it seems to be this: that there is a natural justice in, or connexion between, buying goods and paying for them. I ask, why should a man who buys goods pay for them? Either he has undertaken to do so, or he has not. If he has, make him liable to the extent of his undertaking; to his last shilling and acre, if he has pledged them. But if he has not, if he has not undertaken at all, or if he has limited his liability, I not only see no reason why he should be called on to do that which he has not engaged to do, but I think it a positive dishonesty to attempt to make him. I take the case of a dormant partner as an example: A. has entered into a partnership with B.; he has bargained that B. shall not pledge his credit; he has agreed to find certain capital; he has performed his engagement faithfully. C. has sold goods to B.; B.'s fraud, folly, or misfortune makes him insolvent. The existence of the partnership is discovered, and A. is called on by C., who had never heard of him, and never trusted him, to pay. This claim is, in my judgment, inconsistent with common sense and common honesty.

"Again, it is said, that as profits would have gone to pay a debt, he who takes them ought to pay it. If he did not undertake to do so, why should he use a profit on a transaction with A. to make good the loss on another with B.?

"I do not therefore concur in the objections which have been urged. No doubt some mischiefs may ensue, for it would indeed be a wonderful law that was unattended with any; but they must be contrasted with the advantages on the other side. These I have refrained from giving, as they are to be found stated in the evidence.

"If I had to choose between the proved and anticipated advantages and disadvantages of the prohibition or permission of limited liability partnerships, I should unhesitatingly decide in favour of the permission; but I repeat, I think no one can predict the amount of benefit to be derived from leaving persons to act for themselves; and it is to the value of that principle, and to the probable results of its application, that I attach the greatest importance. I think, therefore, the permission to form partnerships

with limited liability desirable intrinsically. It remains to be considered whether there is anything in our laws, habits, or usages to make it otherwise.

"I think not. It is impossible for any law to be in a worse condition than our law of partnership. From the liability of the private partnership to the last acre and shilling, up to the entire absence of all liability in the members of some incorporated companies, there is every variety of liability, on the extent and nature of which no one, not even the most accomplished lawyer, can speak with certainty. No doubt we are not called on to consider the general law of partnership; but it is important to refer to its condition to ascertain how far the proposed change would be a change—how far a novelty to the public, and what present mischief it might prevent. Now the law does at this moment permit partnerships with limited liability. Many insurance companies, though unchartered, are carried on in that principle; and I conceive all other trades or businesses theoretically may be so conducted. In point of law, I believe that *A.* and *B.* might buy 100 quarters of corn of *C.*, on the terms that *C.* should be paid by *A.* alone, or out of an ascertained fund only. Practically this cannot be done, because it is impossible, in every case of dealing, to bring home to the creditor the knowledge of the partnership terms. The present proposal, therefore, is only to allow that practically, which may be done theoretically in all cases, and is done in many. Again, creditors under the present system often find another species of limited liability, as, where directors of joint-stock companies act *ultra vires*, for instance, trade on credit without authority, the shareholders are held not liable; cases which would be diminished if a more wholesome law of partnership existed. Railway companies, and others incorporated in like way, are partnerships with limited liability.

"There is another argument which is suggested by the present state of the law. Money may be lent at any rate of interest, without a partnership being constituted; say 50 per cent. per annum. It may, I suppose, be lent at that rate, with a stipulation that it shall be reduced in proportion as the profits of the business it was used in, fall; or, as I infer from Lord Eldon's dictum in *ex parte Hamper*, it may be lent to be paid for by a sum proportioned to the profits, though not by a portion of them, and in neither case is a partnership formed thereby. If, however, this is so, why should not a portion of the profits be allowable? It may be said, a jury would find such an arrangement to be colourable, and to be a partnership; but they ought not to do so if they regarded their oaths, for by the hypothesis it is not colourable, which, I apprehend, is the case only where one thing is said and another meant. What is the difference between such cases and a partnership? It is said that in a partnership all the partners jointly are owners of the partnership assets, their goods and debts; but so in effect is a lender to the extent of his

interest. If *A.* owes me 1,000*l.*, and is worth 1,000*l.* he is not in a very distinguishable situation from that of being my partner, our assets being 1,000*l.*, and our capital also being 1,000*l.*, which I have furnished, and for which he has to account. The only difference I can perceive as regards the trader and his creditors is, that the lender of money is better off than he would have been as a limited partner. I say, therefore, that our present law not only presents no objection to the proposed alteration, but sanctions it by its own theory, in some cases by its practice, and only not in all, by the difficulty which exists of giving actual notice to the parties dealing with the partnership of the limited authority of each partner;—and that it urgently requires alteration, to obviate the mischiefs and injustices which at present exists, and to prevent those cruel cases we see in practice, as, for instance, where unwary people holding a few shares in a bank have been wholly ruined by its stoppage, and reduced from plenty to want.

"All laws are objectionable which are of such a character, that those to be affected by them cannot be taught them; they are productive of surprises and hardships. This is the case with a part of our law of partnership. Anything more opposite to what would be supposed to be the law, than the case of *Waugh v. Carver*, I cannot conceive. Two separate firms, trading at different places, bargained privately to share a part of the profits of the businesses which each separately carried on. On the insolvency of one firm, the other was held liable for its debts, on the ground that profits are the creditors' fund. I believe the decision was erroneous in point of law; but it has been too much followed to be now reversed, unless by the legislature. How it is consistent with the rule, that partnership questions are questions of *authority*, it is difficult to see. A reasonable law based on an obvious principle is easily incorporated into the general knowledge of the people; but such a law as this, at the utmost, only inspires some with a vague alarm, that somehow a man may be a partner without knowing or intending it; while many, for want of as much knowledge as that, have most unhappily so found themselves.

"I have made these observations in case my opinion should be desired in addition to the weighty authorities we have collected and referred to; and I wish to say, most sincerely, that I believe I have added nothing to what has been said and better said before, while I have omitted so much, that I fear, in an attempt to be brief, I may have prejudiced the case so ably made by others. If I am only required to give a verdict, I do it unhesitatingly in favour of a change in the law. The evidence and reasoning in its favour, in my judgment, infinitely preponderate; and the case of its advocates is conclusively made out.

"I recommend, therefore,—

"1st. That persons be allowed, as of right, to form partnerships limiting the liability of one or more or all of the partners.

"2nd. That they be allowed to do so by private agreement among themselves, on registering their names, place and nature of business, term of partnership, and capital subscribed by the limited partners.

"I think this registry desirable, for the sake of such partnerships; for the greatest apprehension of mischief I have from their being allowed is, that persons will join them in the belief of a limited liability, and be unjustly made liable to claims by dishonest creditors, who will declare that they always thought the defendant a partner, that he conducted himself as such, and that they had no means of knowing his liability was limited. The last topic will be taken away, or at least diminished, by a registry.

"3rd. That where the liability of all the partners is to be limited, the partnership should be incorporated, on registration.

"4th. That the partnership name should be used, and in such way as to indicate the limited liability.

"In the case of corporations there is no difficulty; in the case where some partners are to be liable unlimitedly, there is perhaps a little practical difficulty, arising from the present permitted use of the names and styles of firms which do not truly describe those who use them. It may, however, be obviated in this

way: if *A. B.* and *C. D.* are to be liable without limit, and others not, let the style of the firm be '*A. B., C. D., and Co., with limited liability.*' The names of the unlimited partners being always specified; those of the others not.

"5th. I need hardly say I would allow money and services to be paid for by a portion of profits.

"I would not prohibit interference by the limited partners, or advise or require return of profits, or additional liability, in case of insolvency of the general partner, or the publishing of accounts. I believe all those regulations to be useless, mischievous, and unjust. If any partner so conducts himself as to induce persons to trust the firm on his credit as a general partner, let him (as any one who is no partner now may), be made liable to the debts so contracted. In that case, where one man has so acted as to induce another to trust him, and in the case where he has himself, or his actual agent has by his authority, pledged his credit, he ought to be liable, and in my judgment in those cases only.

"I desire to add my entire concurrence in the views and reasoning contained in the paper put in by Mr. Kirkman Hodgson.

"G. W. BRAMWELL."

## DIFFERENCES IN THE MERCANTILE LAWS OF ENGLAND, IRELAND, AND SCOTLAND.

HAVING in the last Number noticed the differences pointed by the Mercantile Law Commissioners relating to bills of exchange and promissory notes, we proceed now to various conflicting rules in the Law of Debtor and Creditor:—

### England and Ireland.

#### PRINCIPAL DEBTOR AND SURETY.

1. Where an engagement by principal and surety is joint, though the creditor must institute proceedings against both, yet having obtained judgment or decree, he is at liberty to enforce payment against the surety being living, and, if there be two or more sureties, against any one of them, who is living, exclusively; such surety being left to adjust with the principal, and with the other sureties (if any), his right to indemnification and contribution.

2. The surety, on performing the obligation, cannot have the benefit of bonds or judgments by or against the principal debtor, or other like securities which are extinguished by such performance. (Bond.) *Gammon v. Stone*, 1 Vez. 339.

3. An unqualified discharge of one co-surety is a discharge of all. *Nicholson v. Revell*, 4 Ad. Ell. 675.

4. The discharge of a written guarantee may be proved without writing. See per Parke B., 6 Exch. 851.

### Scotland.

#### PRINCIPAL DEBTOR AND CAUTIONER.

1. If in an engagement by principal and cautioner the latter have bound himself only as cautioner, and not also jointly and severally, or "as full debtor," the cautioner is entitled to have the principal "discussed," i. e. compelled by diligence or execution to perform the obligation so far as the creditor can enforce it.

2. The cautioner, on performing the obligation, is entitled to an assignation of the creditor's claim on the principal debtor, and on co-cautioners, and of all the securities of every description held by the creditor from or against the principal debtor, and not subject to any other claim of the creditor. 1 Bell's Comm. 348.

3. An absolute discharge of one co-cautioner operates as a discharge of the others only to the extent of the proportion which the one discharged should have contributed in the relief of the others. 1 Bell's Comm. 359.

4. The discharge of a written guarantee can be proved only by the writing or oath of the creditor. But when the implement of the



*England and Ireland.***PRINCIPAL DEBTOR AND SURETY.**

5. Remedies against sureties cease at the end of six or twenty years from the time at which the right to sue accrued, according to the nature of the instrument.

**DEBTOR AND CREDITOR.***Minors.*

1. A person is not bound by, but he may enforce performance of, a contract entered into by him while under the age of 21 years, whether alone or in conjunction with others.

*Married Women.*

2. If a married woman living apart from her husband, and not possessed of separate estate, engage in trade, either alone or in partnership, she is not, nor is her husband, unless his consent be proved, liable in respect of any contract entered into by her in the course of such trading; subject, however, to the exception of the wife being liable, if the husband have abjured the realm, or been transported, or if her trade be carried on in the city of London.

*Administration of the estate of a deceased Person.*

3. Debts are of different degrees of legal importance, as debts of record, debts by specialty, and debts by simple contract.

Assets are divisible into legal and equitable.

In the administration of legal assets, debts of a higher degree must be paid before those of an inferior degree. In the administration of equitable assets, all debts are payable *pari passu*.

4. Creditors of a deceased debtor may, by suit in Chancery to which his heirs or devisees is party, obtain payment of their debts out of his real estate at any time previous to alienation by the heir or devisees.

*Retainer and Preference.*

5. An executor or administrator can retain for a debt due to himself out of equitable assets, only *pari passu* with other creditors, and out of legal assets, only in preference to all other creditors of an equal or inferior degree.

*Scotland.***PRINCIPAL DEBTOR AND CAUTIONER.**

principal obligation admits of being proved by parol, such implement by the cautioner may be so proved.

5. The liability of a cautioner ceases at the end of seven years from the date of the obligation, if he is bound by a bond, or written contract, for a sum of money, and if the requisites of the Act 1695, c. 5, have been complied with.

**DEBTOR AND CREDITOR.***Pupils and Minors.*

1. A *pupil*, i. e. a male under 14, or a female under 12, years of age, cannot enter into a contract with any effect whatever.

But the contracts of a *minor*, i. e., a person beyond the years of pupillarity but between 14 and 21 years of age, who acts as a trader, either alone or in partnership with others are effectual even to the extent of rendering him liable to imprisonment. 1 Bell's Comm. 327; 2 Bell's Comm. n., 4.

*Married Women.*

2. A married woman living separate from her husband, who engaged in trade with his acquiescence, may create obligations or debts in respect, or in the course of her trading, which may be enforced against herself and her husband.

*Administration of the estate of a deceased Person.*

3. Debts of every description whether constituted by judgment, bond or bill, or an open account, so far as they are not secured by a charge on specific property, or by diligence used in the lifetime of the debtor, are payable out of all his real and moveable property, *pari passu*.

There is no distinction between legal and equitable assets.

4. If the real estate of a defunct, although it be in possession of his heir, be adjudged within three years after his death for his own debts, such adjudications are preferable to those which may be expedited for the debts of the heir. But after the three years, this privilege ceases, and the proper creditors of the heir may thereafter get a *pari passu* preference with the creditors of the defunct.

*Retainer and Preference.*

5. An executor may retain for a debt due to himself, to the exclusion of all other creditors of the deceased who have not used diligence within six months after the death of the defunct.

DEBTOR AND CREDITOR.

*Retainer and Preference.*

6. And he cannot retain for a contingent or unliquidated debt due to himself.

7. An executor or administrator may, before proceedings are commenced against him, pay any creditor in full in preference to other creditors of an equal or inferior degree.

8. The signature in all writings must be proved on the part of the person adducing them in evidence.

9. Express discharge (without payment or performance) of contracts in writing not under seal may be oral. (A promissory note.) *Foster v. Dawber*, 6 Exch. 839.)

10. Discharge of one of several joint debtors in terms which do not reserve the remedy against the other debtors operates as a discharge of all. Co. Litt., 232, a. (Joint acceptors of a note.) *Rea v. Bayley*, 1 Carr. & P., 435. (Giving time to one co-obligor.) *Oakeley v. Pasheller*, 4 Clark & Finn., 207.)

11. Exoneration of one of several joint debtors before breach would exonerate all; so would satisfaction from one after breach. So everything which gives one an answer to the action, except personal discharge, as bankruptcy—insolvency. But a covenant not to sue one does not release the others.

12. To an action for the recovery of specific property by the owner or his assignees in bankruptcy, the existence of a debt due from the owner to the person, in whose possession the property is, affords no defence unless there is a lien or pledge for that debt.

13. The creditor at whose suit the goods of a debtor are first seized is entitled to be first paid out of the debtor's goods.

DEBTOR AND CREDITOR.

*Retainer and Preference.*

6. And this even to the effect of securing himself in relief of engagements undertaken for the deceased, and not yet broken. 2 Ball's Comm. 84.

7. An executor cannot prefer any of the creditors over others who claim within six months after the debtor's death.

But the claimants within that period being satisfied, the executor may thereafter pay in full the other creditors as they apply.

8. The signature in all writings executed with the formalities prescribed by statute, and also in bills of exchange and promissory notes, is presumed to be genuine until the party calling it in question prove the contrary.

Writings holograph of the granters, or granted in commercial affairs, or followed by implements to some extent, are valid if the genuineness of the signature be proved, but not otherwise.

And all other kinds of writings granted by private parties are invalid, although signed by the granters, if the execution of them be not authenticated by the statutory formalities.

9. Express discharge (without payment or performance) of contracts in writing of any kind can be proved only by writing or oath of the creditor.

10. Discharge of one of several joint debtors does not release the others further than their right of relief against the party so discharged may be affected.

11. Anything done by a creditor, whereby the right of relief, which one of several joint debtors is entitled to, is detrimentally affected, has the effect of extinguishing the creditor's claim against such debtor to that extent, but no further.

12. A person who has in his lawful possession the property of another person who becomes bankrupt has a right of retention thereof for any debt due to him from the owner of the property.

13. When diligence or execution has been executed against a debtor, so as to make him notour bankrupt, all arrestments and poindings used within sixty days before or four months after such bankruptcy are ranked *pari passu*.

OATHS IN CHANCERY.

MASTERS EXTRAORDINARY IN SCOTLAND.

In *The Times* of Saturday the 8th inst., the following appeared among the Law Reports, viz. :—

"Before Vice-Chancellor Sir J. Stuart,—Friday, 7th July,—*Faithful v. Gillett*.

"Mr. Smythe applied for liberty to file an

affidavit sworn in Scotland before a Master Extraordinary, described as 'a Commissioner for taking affidavits to be used in the Court of Chancery.' The Clerk of Records and Writs had refused to file same on the ground that Lord St. Leonards' Act, 16 & 17 Viet. c. 79, enacted, that the style or appellation of Master Extraordinary in Chancery should cease, and that of Commissioner 'to administer Oaths in

Chancery' be substituted, but as the act did not extend to Scotland, the person administering the oath should consequently have described himself as 'a Master Extraordinary.'

"The Vice-Chancellor having conferred with the Clerk of Records and Writs, it was ultimately arranged, by the consent of both parties, that the affidavit should be filed in its present form."

Being one of those whose appointment originally was that of a "Master Extraordinary," allow me to propound this question to yourself, or some of your readers:—Supposing that I were to go and reside in *Wales*, or—as I frequently do—visit that country, and whilst there were to be called upon to administer an oath in Chancery,—which would be the correct way I should designate myself on so doing—"A Master Extraordinary" or simply "A Commissioner to administer Oaths in Chancery?" For, on referring to the Act, I find no mention is made of its extension to *Wales*, as is done in the Lunacy Regulation Act 16 & 17 Vict. c. 70 (L. O., vol. 46, p. 448). Unless, then, *Wales* be included by implication in the Act, I presume the registrar's objection would be equally as well founded to file an affidavit sworn before "A Commissioner" in *Wales*, as in *Scotland*. But taking it for granted the Act embraces *Wales*, I find, however, by sect. 1, that the new designation is to be "Commissioners to administer Oaths in Chancery in *England*." So that a Commissioner swearing an affidavit in *Wales* must, I anticipate, end with "*in Chancery*," and leave out "*in England*,"—thus, "A Commissioner to administer Oaths in Chancery,"—though the Act is silent thereon.

By sect. 6 we find, that the recited provisions of the 15 & 16 Vict. c. 86, are to be extended to the Isle of Man, and that all affidavits, &c., to be used before any registrar or other officer in Great Britain or Ireland for any purpose connected with the registration of deeds or wills or other documents or things under the authority of Parliament, may be sworn or taken in *Scotland* or *Ireland*, the Isle of Man, or the Channel Islands, &c., before any Court, Judge, notary public or person hereby or otherwise lawfully authorised to administer oaths in such country, &c.

Such being the case, it certainly appears to me, that if an affidavit, "connected with the registration of deeds or wills or other documents, &c.," was sworn to in *Scotland* or *Ireland*, the party administering the oath, if "a Master Extraordinary," should then by virtue of this very Act, describe himself as "A Commissioner to administer Oaths in Chancery."

A Commissioner's authority to administer oaths is not, I take it, limited to any locality in *England* or *Wales* (if the latter be included) as it is (for what reason I know not) by the Commissions issued to administer Oaths in the Courts of Queen's Bench, Common Pleas, and Exchequer.

A SUBSCRIBER SINCE 1836.

[We think that *Wales* is included in the Act,

and that the title given to those who were formerly Masters Extraordinary, should be used, viz., "a Commissioner to administer oaths in Chancery in *England*." Such is the title, though the oath may be taken in *Wales*.—ED.]

## LAW STUDENTS' DEBATING SOCIETY.

### ANNUAL REPORT OF THE COMMITTEE.

YOUR Committee, on surrendering into the hands of the Society the trust reposed in them during the past year, have much pleasure in presenting a report of the proceedings, and it is gratifying to add, the progress and success of the Society during that period.

While laborious professional duties demand such assiduous attention from most of the members, it is very satisfactory to find so large a number of Law Students continuing to devote time and pains to the objects of the Society. Acknowledgments are especially due to those members who have outlived the period of studentship and entered upon responsible positions, and who yet have not abated their interest in the Society. It is further matter of congratulation that among the new members there are those who manifest considerable zeal and talent in sustaining the debates.

The number of new members elected during the past twelve months has been 36, and the total number of members now on the books is 81, being an increase of 17 since the last Annual Meeting, and a larger advance than in any previous year. The average attendance at the meetings has been 25. A resolution has been passed exempting members of three years' standing, and members of the Incorporated Law Society, from the usual fine for absence. This has preserved on the list many old and valuable members who would otherwise have been compelled to resign, and partially accounts for the rather low proportion which the weekly attendance bears to the total number of members.

There have been held, during the twelve-months, 37 meetings, at which 23 legal and 8 jurisprudential questions have been discussed and decided,—two of the jurisprudential questions having occupied two evenings each.

Your Committee have, during the year, investigated about 100 questions suggested to them for discussion, from which they have chosen 35 for the monthly papers. The selection is only made after a careful review of the authorities to be found on the point and a deliberate vote of a Committee meeting. It appears from the record of the votes, that by this means scarcely any questions on which there has not been room for serious doubt have been admitted into the paper, inasmuch as on only six out of the 37 meetings out of the past year have the votes been unanimous, while on five other evenings a decision has been arrived at only by the casting vote of the chairman. On

a general average, the majority by which the decision has been carried has borne to the number of voters a proportion of only four to 10.

The Committee desire to express their thanks to those members who have furnished them with questions for discussion, and they trust that members generally will not neglect this essential duty.

The Society has in the course of the year sustained a loss in the resignation of office by their late secretary, who for several years had most efficiently performed his duties. The vacancy was supplied by the election of Mr. *Bompas*, who at present holds that office.

The members have resolved to present Mr. *Howlett* with a testimonial of their appreciation of the services rendered by him, which will be presented at the annual dinner on the 7th of July.

The details of the Society's proceedings have thus been given. The results effected by those proceedings it is not in the Committee's power to state. These lie in the improved powers, both of thought and language, acquired by the individual members. It is at least an agreeable token, that law students do not count their profession as an insipid drudgery, but as an interesting and agreeable pursuit, when we find that so many take pleasure after the hours demanded by business are expired in continuing by these legal debates their professional studies.

When it is remembered that, during the last seven years, no fewer than 200 members in all have been elected into the Society, it will be granted that the objects of the Society have not been unappreciated, nor its success confined or partial.

The treasurer's account has been audited, and shows a balance in hand of 41*l.* 12*s.* 11*d.*

[The meetings of this Society are held every Tuesday evening in one of the arbitration rooms at the Incorporated Law Society, by permission of the Council, free of expense. Our readers will no doubt agree with us that this Report is highly creditable to the members of the Law Students' Society.—ED.]

## LEGAL OBITUARY.

*Acland*, Arthur, late Judge of the County Court of the District of Huron, Canada, aged 46. Called to the Bar by the Inner Temple, 18th Nov., 1831. Died April 21.

*Allen*, Robert, of 3, Serjeant's Inn, Chancery Lane, of the Oxford Circuit, Serjeant-at-Law. Called to the Bar by Gray's Inn, 18th Nov., 1835, and received the coif in 1845, and afterwards a patent of precedence. Died Feb. 17.

\**Ambrose*, Thomas Henry, of 7, Manchester Square, and Copford, near Colchester, Solicitor, aged 31. Admitted on the Roll Easter Term, 1844. Died April 6.

*Belcher*, Henry, of Whitby, Yorkshire, Solici-

tor, aged 68 (firm Belcher and Brewster). He was born at Manchester, and served his clerkship to Messrs. Milne, and in 1811 entered into partnership with Mr. Clarke, of Guisborough, and continued to carry on business under the firm of Clarke and Belcher,—then for several years alone,—in 1835 with Mr. Nathaniel Langborn, and afterwards under the firm of Belcher, Langborn, and Buchannan. From 1835 (Mr. Langborn having died in August, 1844, and on the retirement of Mr. Buchannan) to 1850 he continued alone, when he was joined by Mr. Gray, and afterwards by Mr. Brewster. Admitted on the Roll of Solicitors 28th May, 1811. Died Feb. 14.

*Brutton*, Charles, of Exeter, Solicitor, aged 63. Admitted on the Roll Hilary Term, 1813. Died Jan. 31.

*Bunny*, Jéré, of Newbury, Berkshire, Solicitor (firm Bunny and Talbot). Admitted on the Roll Hilary Term, 1812. Died March 29.

*Chambers*, Robert, of 6, South Square, Gray's Inn, Barrister-at-Law, aged 55. Called to the Bar by Lincoln's Inn, 26th Nov., 1830. Died March 12.

*Daniell*, Edmund Robert, Commissioner of Bankruptcy for the Birmingham District. Called to the Bar at the Middle Temple, 22nd Nov., 1816. Died March 16.

*Dean*, John Joseph, formerly of 16, Essex Street, Strand, Solicitor, aged 34. Admitted on the Roll Trinity Term, 1846. Died Feb. 17.

*Fardell*, John, of Holbeck Lodge, Lincolnshire, Barrister-at-Law. Called to the Bar by the Middle Temple, July 2, 1824. Died Feb. 5.

\**Frere*, George of 45, Bedford Square, aged 80. He was admitted on the Roll Hilary Term, 1797, and was struck off the Roll at his own request, by rule of Court dated 15th Nov., 1844. Mr. Frere was one of the founders and a powerful supporter of the Incorporated Law Society, and of various measures for the improvement of his branch of the Profession, particularly by the institution of Lectures and the Examination of Articled Clerks. He was a member of the Council till his retirement in 1844. Died April 27.

*Goodwin*, James, of Norwich, Solicitor, aged 79. Admitted on the Roll Easter Term, 1797. Died March 25.

*Gouldsmith*, Richard, M.A., of the Charterhouse, Barrister-at-Law. Called to the Bar by Lincoln's Inn, 9th May, 1806. Formerly a Commissioner of Bankrupts for Bolton-le-Moors. Died Jan. 28.

*Holland*, Henry, of West Bromwich, Staffordshire, Solicitor. Admitted on the Roll Hilary Term, 1831. Died March 18.

*Hulton*, Edward Horne, of Southampton, Barrister-at-Law, aged 60. A Magistrate of the Borough and County and Member of the Town Council. Called to the Bar by Lincoln's Inn, 7th June, 1839. Died May 27.

*Jackson*, George, of 3, Copthall Buildings and Walworth, Solicitor, aged 59. Admitted on the Roll Hilary Term, 1817. Died Feb. 4.

*Jennings*, Joseph Crew, of Eveshot, Dorset

shire, Solicitor, aged 45. Admitted on the Roll Easter Term, 1830. Died March 23.

*Joze*, William, of 8, Gray's Inn Square, Barrister-at-Law, aged 65. He held the office of Recorder of Liskeard, and was a Bencher of Gray's Inn, by which Society he was called to the Bar 20th June, 1820. Died May 1.

*Lee*, Thomas, of Bradford, Yorkshire, Barrister-at-Law, aged 90. He was the author of the Dictionary of Practice and other useful works. Called to the Bar at Gray's Inn, 17th June 1823. Died March 14.

*Lodge*, John, of Lancaster, Solicitor. Admitted on the Roll Trinity Term, 1824. Died March 21.

*Matthews*, Richard, of 4, Brick Court, Temple, Serjeant-at-Law. Called to the Bar by the Middle Temple, 25th April, 1828, and made a Serjeant in 1852. Died Feb. 24.

*Melvin*, James William, of Swansea, Solicitor. Admitted on the Roll Michaelmas Term, 1813. Died March 12.

*Moore*, Augustus Henry, of 7, South Square, Gray's Inn, Solicitor (firm Thomas & Moore). Admitted on the Roll Easter Term, 1830. Died March 31.

*Motte*, William Radley Standish, Barrister-at-Law. Called to the Bar by the Middle Temple, 10th June, 1836. Died Feb. 11.

*Newland*, Henry, of Chichester, Solicitor. Admitted on the Roll Michaelmas Term, 1840. Died Jan. 1.

*Overton*, John, of Fakenham, Solicitor, aged 79. Admitted on the Roll Easter Term, 1796. Died Feb. 19.

*Palmer*, Nathaniel, of Great Yarmouth, Norfolk, Solicitor and Notary, aged 75. Admitted on the Roll Trinity Term, 1800. Died March 28.

*Parke*, James, of 63, Lincoln's Inn Fields, Solicitor (firm J. and W. Parke). Admitted on the Roll Trinity Term, 1822. Died Feb. 23.

*Pillans*, William Pott, of Swaffham, Norfolk, Solicitor, aged 56. A Perpetual Commissioner and Clerk to the Magistrates. Admitted on the Roll Michaelmas Term, 1822. Died Feb. 27.

*Plunket*, Right Hon. William Conynham, Lord, aged 90. He was called to the Irish Bar in 1787, and was made Solicitor-General for Ireland in October, 1803, and Attorney-General in Oct., 1805, which office he resigned in May, 1807, but was re-appointed in 1822. In June, 1827, he was raised to the peerage and appointed Chief Justice of the Irish Court of Common Pleas, over which he presided until November, 1830, when he was made Lord Chancellor for Ireland, and continued to hold that office until the appointment of Lord Campbell in his stead. Died Jan. 5.

*Rand*, John, of Guildford, Solicitor, aged 63. Town Clerk, Clerk of the Peace, and Registrar of the Borough Court and Auditor of the Union. Admitted on the Roll Michaelmas Term, 1815. Died April 3.

*Reynolds*, Henry Revell, M. A., of 5, Upper Wimpole Street, late Chief Commissioner of the Court for the Relief of Insolvent Debtors,

aged 80. He was formerly a Commissioner of Bankrupts and a Qui Tam Commissioner, and was called to the Bar by the Honourable Society of Lincoln's Inn 19th May, 1798. Died May 19.

*Robinson*, George, late of Wellingborough, Northamptonshire, Solicitor, aged 26. Admitted on the Roll Michaelmas Term, 1849. Died Jan. 26.

*Russell*, Henry Charles, of 13, Golden Square, Solicitor, aged 26. Admitted on the Roll Trinity Term, 1850. Died Jan. 30.

*Saunder*, Thomas, Comptroller of the Chamber of the City of London, F.S.A. He was a Common Councillor from 1814 to 1820, and was elected Comptroller in 1841. He had also held the offices of Vestry Clerk to the parishes of St. Martin Vintry, St. Michael Royal, St. Benet Gracechurch, St. Leonard Eastcheap, St. Mary Bothan, and Allhallows the Great, and also of Clerk of Dowgate Ward. Admitted on the Roll Easter Term, 1809. Died Jan. 25.

*Scadding*, Edwin, of 1, Gordon Street, Gordon Square, Solicitor (firm Scadding and Son), aged 34. Admitted on the Roll Hilary Term, 1841. Died March 22.

*Simmons*, William, of 10, King's Bench Walk, Temple, Solicitor (firm Brandrett, Randall, & Simmons), aged 68. Admitted on the Roll Michaelmas Term, 1831. Died Feb. 20.

*Smith*, George, of 26, Argyll Street, Regent Street, and Slough, Solicitor (firm George Smith & Son). Admitted on the Roll Michaelmas Term, 1819. Died April 5.

*Talford*, Sir Thos. Noon, Knight, D.C.L., aged 58. Died March 13. (See Memoir, vol. 47, p. 374).

*Taylor*, George Henry, of 5, Nicholas Lane, Lombard Street, Solicitor. Admitted on the Roll Michaelmas Term, 1831. Died Jan. 25.

*Thorp*, Thomas, of Alnwick, Solicitor, aged 48 (firm Thorp and Dickson). Admitted on the Roll Easter Term, 1827. Died March 23.

*Vickery*, Thomas Munnings, of 25, Lincoln's Inn Fields, Solicitor, aged 62. Admitted on the Roll Michaelmas Term, 1819. Died Feb. 27.

*Vincent*, George Godby, of 8, Staple Inn, Solicitor (firm Vincent and Freeman). Clerk to the Borderers' Company. Admitted on the Roll Michaelmas Term, 1844. Died Feb. 5.

*Wales*, George, M. A., Barrister-at-Law, aged 80. A Bencher of Gray's Inn and formerly a Commissioner of Bankrupts for Leeds. Called to the Bar by Gray's Inn, 11th Feb. 1801. Died April 19.

*Warneford*, Richard, of 6, Symond's Inn, Chancery Lane, Solicitor. Admitted on the Roll Hilary Term, 1820. Died Feb. 4.

*Warren*, John, of Exeter, Solicitor, aged 80. Admitted on the Roll Hilary Term, 1795. Died Jan. 12.

*Wells*, Henry, of Midhurst, Sussex, Solicitor, aged 64. Admitted on the Roll Hilary Term, 1835. Died Feb. 22.

*Willan*, Leonard, of Lancaster, Solicitor and Notary, aged 61 (firm Willan and Jackson).

Admitted on the Roll Hilary Term, 1815. Died April 20.

\*Willoughby, Benjamin Edward, of 13, Clifford's Inn, Solicitor (firm Willoughby and Cox). Admitted on the Roll Trinity Term, 1816. Died April 30.

Wykes, Thomas Smith, of Croydon, Solicitor, aged 27. Clerk to the Local Board of Health and to the County Court for the District, and to the Trustees of the Croydon and Reigate Roads. Admitted on the Roll Trinity Term, 1850. Died May 14.

\* Marked thus were Members of the Incorporated Law Society.

## NOTES OF THE WEEK.

### SCOTCH LAW APPOINTMENT.

Mr. John Hill Burton, Advocate, has been appointed Secretary to the General Board of

Directors of Prisons in Scotland, in the room of Mr. Ludovic Colquhoun, deceased.

### MIDDLESEX ASSISTANT JUDGE.

W. H. Bodkin, Esq., will, with the approval of the Secretary of State for the Home Department, perform the duties of Assistant Judge in Middlesex during the absence of Mr. Serjeant Adams, who has gone abroad for the benefit of his health until the early part of next September.

### NEW CHARITABLE TRUSTS' COMMISSIONER.

THE Queen has been pleased to appoint the Right Hon. Lord John Russell to be the unpaid Charity Commissioner for England and Wales, under the provisions and for the purposes of the "Charitable Trusts' Act, 1853," in the room of the Right Hon. Sir George Grey, Bart., resigned.—From the *London Gazette* of July 11.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lords Justices.

*Milne v. Gilbert.* July 7, 1854.

**WILL.—CONSTRUCTION.—HUSBAND AND WIFE.—NEXT OF KIN OF WIFE ENTITLED.**

*A testator directed, that in the event of any daughter of his nephew dying without leaving issue, her share of his estate should be held in trust for the persons who would, at the time of the decease of such daughter, be entitled as next of kin or otherwise to the personal estate of such daughter, under the Statutes of Distribution: Held, that the husband of a daughter dying, having had issue one child only, who died an infant during her lifetime, was not entitled to her share on taking out letters of administration to her estate, and his petition was dismissed with costs.*

THE testator, by his will, dated in April, 1841, gave all his real and personal estate in trust to convert, and after payment of his debts, funeral, and testamentary expenses, and legacies, to be divided into nine equal shares among the children of his nephew, Thomas Scholes Withington, as therein-mentioned, and he directed, that in case any one or more of the daughters of his nephew should die without leaving any child who should live to acquire a vested interest in her or their share or their respective shares of the trust premises, that the said share or shares of such daughter or daughters respectively so dying, should respectively go and belong to and be held in trust for the person or persons who would at the time of the decease of such daughter or daughters respectively, or of the decease or failure of her or their child or children respectively (whichever event should last happen), be entitled, as next of kin or otherwise to the personal estate of such daughter or daughters respectively, under the Statutes made for the

distribution of intestates' effects, and in the same proportions and manner as they would be entitled by virtue of such Statutes, if such daughter or daughters respectively had then died intestate. It appeared that Alice Elizabeth, one of the children, had married Mr. Eccles, and died in June, 1852, having had issue, one child only, who died an infant during her lifetime, and her husband having obtained letters of administration to her estate presented this petition, claiming her share in the trust fund. The petition was heard on August 5, 1852 (reported 2 De G., M'N. & G. 715), deciding against the petitioner, and it now came on for rehearing.

*Elmsley and Hetherington*, in support, cited *Squib v. Wyn*, 1 P. Wms. 378; *Withy v. Mangles*, 10 C. & F. 215.

*Wigram and Goldsmid*, contra, referred to *Bailey v. Wright*, 13 Ves. 49; *Watt v. Watt*, 3 Ves. 244; *Cholmondeley v. Lord Ashburton*, 6 Beav. 86; *Kilner v. Leach*, 10 Beav. 362; *Garrick v. Lord Camden*, 14 Ves. 372.

*Hobhouse* for the next of kin.

The Lords Justices said, that according to the words of the will, the husband could not take, and the petition must be dismissed, with costs.

### Master of the Rolls.

*Calley v. Richards.* July 9, 1854.

**SOLICITOR AND CLIENT.—PRIVILEGED COMMUNICATION ALTHOUGH AFTER RETIREMENT FROM PRACTICE.**

*A communication was made to a solicitor by a client (the plaintiff), who was unaware that he had ceased to practise: Held, that it was nevertheless privileged, and a motion was refused to have the evidence of such solicitor on behalf of the defendant.*

THIS was a motion on behalf of the defendant in this suit, to have the evidences taken

of Mr. Mullings, M.P., and who formerly practised as a solicitor at Cirencester, as to certain communications made to him by the plaintiff in reference to the subject matter of the suit. It appeared that Mr. Mullings had ceased to practise at the time the communication in question was made.

*Lloyd and Prior* in support.

*R. Palmer and Cairns* contra, on the ground that the plaintiff was ignorant that Mr. Mullings had ceased to practise, and that the communication was privileged.

The *Master of the Rolls* said, the want of knowledge of Mr. Mullings having ceased to practise was evidence that the communication had been made in confidence, and it was accordingly privileged, and the motion would be refused.

*Isley v. Chubb.* July 10, 1854.

BILL TO SET ASIDE RELEASE BY NEXT OF KIN TO EXECUTOR OF INTEREST IN ESTATE.—INADEQUATE CONSIDERATION.

*The acting executor under a will had represented to the plaintiff, the next of kin of the testator, that the value of the estate was uncertain, and had eventually obtained a release to himself of all the plaintiff's interest for 400*l.* The estate realised 800*l.* nearly: Held, that the relation of trustee and cestui que trust existed, and that the release must be set aside, with costs.*

In this administration suit it appeared that upon the death of the testator in February, 1852, all the legatees entitled under his will were dead, and that the defendant, who was the principal acting executor, had called on the plaintiff and offered him 100*l.* for his interest in the estate as next of kin, representing that its value was uncertain, and ultimately that he had given 400*l.* and obtained a release of all the plaintiff's interest therein. The property turned out to be of the value of 800*l.* nearly, and this bill was filed to set aside the transaction.

*Lloyd and Hetherington* for the plaintiff; *Fooks* for the defendant.

The *Master of the Rolls* said, that the deed of release could not stand. One of the parties to the transaction was the representative of the next of kin, and the other the executor of the property to which it related, and they were thus in the position of trustee and *cestui que trust*. The deed must therefore be set aside, and the money be paid into Court before next Term, with costs.

*Vice-Chancellor Kindersley.*

*In re Bear's Trust.* July 7, 1854.

LEGACIES, CONDITIONAL.—UNDERTAKING JOINT AND SEVERAL FOR PERFORMANCE OF CONDITION.

*Legacies were given to three legatees on condition that they maintained a lunatic, who on default was to have the whole: Held, that the undertaking to be given*

*for the performance of the condition must be joint and several, and not merely limited and personal.*

It appeared that three legatees had accepted legacies upon condition that they maintained a lunatic, and that in default of their complying with such condition the whole property was given to the lunatic.

A question now arose on this petition, upon the refusal of one of the legatees to give an undertaking for the due performance of the condition, whether the same should be joint and several, or merely limited and personal.

*Cotton, Karslake, and Nichols* for the several parties.

The *Vice-Chancellor* said, that a joint and several undertaking must be given, or that the gift over would operate.

*Tracey v. Lawrence.* July 11, 1854.

SPECIFIC PERFORMANCE OF CONTRACT TO PURCHASE OF MORTGAGEE.—NOTICE TO INFANT HEIRESS OF MORTGAGOR.

*The proviso for redemption in a mortgage deed required that six months' notice should be given to the mortgagor, his heirs or assigns, to pay the principal and interest before proceeding to a sale under the power or to take possession. It appeared that the plaintiff, the mortgagee, had, after the death of the mortgagor, leaving an infant heiress, given the notice to the infant and also to the guardian appointed by the Court: Held, that the defendant, who had contracted to purchase, could not take objection to the title on the ground that the heiress was an infant, and a decree for a specific performance of the contract was therefore made.*

THIS was a suit to enforce the specific performance of a contract entered into by the defendant to purchase certain property of the plaintiff, who was mortgagee thereof with power of sale. It appeared that the proviso for redemption required six months' notice to be given to the mortgagor, his heirs or assigns, before proceeding to a sale or to take possession, and that the mortgagor being dead notice had been accordingly given to his infant heiress-at-law and to the guardian appointed by the Court. The defendant had contracted to purchase, but he objected to complete on the ground of the infancy of the heiress-at-law. The guardian was willing to join in the conveyance.

*Dart* for the plaintiff; *Hughes* for the defendant.

The *Vice Chancellor* said, that it could not be presumed the accident of any disability by reason of the infancy of the party entitled to the equity of redemption should prevent the mortgagee from obtaining possession or the repayment of his principal and interest upon giving the notice required, and that a decree must be accordingly made for a specific performance.

**Vice-Chancellor Stuart.**

*Faithfull v. Gillett.* July 7, 1854.

**OATHS IN CHANCERY ACT.—WHETHER APPLICABLE TO SCOTLAND.—AFFIDAVIT.**

*Quære, whether the 16 & 17 Vict. c. 78, which abolishes Masters Extraordinary in Chancery, and substitutes Commissioners for taking affidavits, extends to Scotland, and, therefore, whether an affidavit sworn there before one of the former Masters Extraordinary is correctly described as sworn before "a Commissioner for taking affidavits to be used in the Court of Chancery."*

THIS was an application for liberty to file an affidavit, which was sworn in Scotland before one of the former Masters Extraordinary, but who had described himself as "a Commissioner for taking affidavits to be used in the Court of Chancery." The Clerk of Records and Writs refused to receive the affidavit on the ground that the 16 & 17 Vict. c. 78, did not extend to Scotland, and that the description should have been as a Master Extraordinary.

*Smythe* in support; *Malins* for the other parties.

The Vice-Chancellor, upon the other parties consenting, directed the affidavit to be filed, but without deciding the question.

*Smith v. Smith.* July 7, 1854.

**EXECUTORS. — INDEMNITY AGAINST BREACHES OF COVENANT BY TESTATOR. — VARYING DECREE ON PETITION.**

*By a decree in an administration suit, the proceeds of certain leasehold property, of which the testator was lessee, were directed to be divided among the residuary legatees. The covenants to keep in repair and to insure were alleged to have been broken: Held, on the petition of the executors, that they were entitled to have an indemnity, and that if the parties differed as to its extent, the case would be adjourned to Chambers.*

*Baggallay* appeared in support of this petition, which was presented by the executors of the testator in this administration suit, in which a decree had been made to distribute among the residuary legatees the proceeds of certain leasehold property, praying to have set apart a portion of such proceeds as an indemnity against the alleged breaches of the covenants to keep in repair and to insure.

*De Gez* for the plaintiffs, contra, on the ground that the decree could not be varied on petition; *Berrey* for other parties.

The Vice-Chancellor said, that the executors were entitled to an indemnity, and the case must be adjourned to Chambers in the event of the parties differing as to its extent.

*Hooper v. Hooper.* July 9, 1854.

**MARRIED WOMAN. — VOLUNTARY SETTLEMENT. — RENOUNCING. — ELECTION.**

*Certain leaseholds were assigned by a voluntary settlement by the testator in trust for sale and for payment of the dividends on the proceeds to himself for life, and after his death to the proper hands of the plaintiff for her sole and separate use without power of anticipation. The premises were sold, but the testator received the proceeds, and by his will gave the plaintiff and her husband a life interest only in his estate, with a gift over to his nephew. The plaintiff had endorsed a memorandum on the settlement upon the sale taking place, that she resigned all her interest thereunder, and that it was the desire of all parties it should be treated as a nullity: Held, that the plaintiff could not claim under the settlement, but that even supposing she were so entitled she was put to her election.*

IT appeared that by a deed of settlement dated in November, 1831, and which was voluntary, the testator assigned certain leaseholds in trust for sale and for payment of the dividends and interest on the proceeds to himself for life, and from and after his decease in trust to pay the income to the proper hands of the plaintiff for her sole and separate use without power of anticipation. The premises were sold in 1840 under an authority from the testator, but he received the proceeds himself, and it appeared that the plaintiff had on the occasion endorsed a memorandum on the deed to the effect that she resigned all her interest thereunder, and that it was the desire of all parties it should be treated as a nullity. The testator died in 1843, having by his will given the rents and profits of his estate to the plaintiff and her husband for life, with a gift over to his nephew on their decease. This bill was now filed to obtain a declaration that the trustee under the settlement, who was also the executor of the will, held under the settlement in trust for her.

*Bacon* and *Steere* for the plaintiff; *Craig* and *E. Steere* for the defendant.

The Vice-Chancellor said, that the settlement was in its form perfectly voluntary, and it was contended the plaintiff had no power to resign her interest thereunder, by reason of the clause against anticipation. She, however, did not anticipate, but evidently renounced her interest in consideration of the benefits to be derived under the will of the testator; and even if she were not bound thereby she was liable to elect. The bill would therefore be dismissed but without costs.

*Thomas v. Cooper.* July 11, 1854.

**EQUITABLE DEPOSIT OF DEEDS TO SECURE ADVANCES BY BANK. — INTEREST PAYABLE.**

*A deposit of deeds was made to the trustees*



of a bank to secure the amount to be found due by the plaintiff, and also a warrant of attorney. The plaintiff paid 700*l.* on the defendants' having given notice of their intention to proceed to a sale if the balance due were not paid, and S. paid the remainder, taking an equitable assignment: Held, that an account must be directed to ascertain what portion of the securities were on the land, in order to show to what part the 2 & 3 Vict. c. 47, applied, so that no more than 5 per cent. interest could not be charged.

It appeared that the plaintiff, being indebted to the Chichester branch of the London and Coventry Joint Stock Bank, had deposited with the defendants, the trustees of the bank, the title deeds to certain real estates to secure a sum of 5,500*l.*, with interest at 5 per cent., together with a warrant of attorney, but it was to be as a security for the sum to be found due on a settlement of the banking account. The defendants afterwards gave the plaintiff notice of their intention to proceed to a sale unless the balance due were liquidated, and he accordingly paid 700*l.*, and a Mr. Slade paid the remainder, taking an equitable assignment. This bill was filed, charging that more than 5 per cent. was claimed by the defendants, and that the transaction was void under the 2 & 3 Vict. c. 37, as being secured upon real property.

*Craig and Moxon* for the plaintiff; *Malins* and *H. Stevens* for the defendants.

The Vice-Chancellor said, that upon the result of the inquiry before the Master, which had been directed at the hearing as to the character of the mortgage security and the dealings and transactions between the parties, the rate of discount charged was more than 5 per cent. It appeared that Mr. Slade had come forward and paid the balance due, in order to prevent the security from being enforced, in pursuance of the notice given by the defendants, and took an equitable assignment. When that balance was paid it was understood the accounts should be rendered, and although more than 5 per cent. could be charged upon personal security, excess beyond such amount could not be charged if the real estate were resorted to. There must, therefore, be a reference as to the amount of such excess, in order to ascertain which of the securities were within the protection of the Statute.

#### Vice-Chancellor Wood.

*Avery v. Langford.* July 7, 1854.

#### SPECIFIC PERFORMANCE OF AGREEMENT FOR BOND.—CARRYING ON TRADING ESTABLISHMENT.

The defendant agreed to give a bond for 2,000*l.* that he would not at any time after the Michaelmas then ensuing, or at any time during the joint lives of himself and the plaintiff, directly or indirectly, be concerned in any trading establishment within a

certain district specified: Held, in a suit for the specific performance of the agreement, that the terms were not too large, and that the plaintiff was entitled to a decree with costs, the form of bond to be settled at Chambers in case of difference.

This was a bill to enforce the specific performance of an agreement entered into by the defendant to give the plaintiff a bond for 2,000*l.*, that he would not at any time after the Michaelmas next ensuing, or at any time during the joint lives of himself and the plaintiff, directly or indirectly, be concerned in any trading establishment within the district comprised between Morwentstow and New Quay, and Launceston and Bodmin, in the county of Cornwall.

*James and Karslake* for the plaintiff.

*Rolt and Giffard* for the defendant, cited *Horne v. Graves*, 7 Bing. 735; 5 M & P. 768.

The Vice-Chancellor said, that the bond was not void by reason of the terms being too large, and the defendant had had besides the opportunity of taking the advice of his solicitor. There must be a specific performance with costs,—the form of bond to be settled at Chambers if any difference arose.

#### Court of Exchequer.

*Watson v. Spratley.* April 29; May 2; July 7, 1854.

#### PAROL CONTRACT FOR SALE OF SHARES IN MINE ON COST-BOOK PRINCIPLE.—STATUTE OF FRAUDS.

Held, that a contract for the sale of shares in a mine, carried on upon the cost-book principle, is not a contract for the sale of an interest in land within the meaning of the 4th section of the Statute of Frauds, and is therefore valid, although not reduced into writing.

This was a rule nisi granted on Jan. 13 last to set aside the verdict for the plaintiff and for a new trial in this action, which was tried before *Martin, B.*, at the sittings in London after Michaelmas Term last. The action was brought to recover for the non-delivery of certain shares in a mine carried on upon the cost-book principle, in pursuance of a parol contract.

*Cur. ad. vult.*

The Court (per *Alderson, Platt, and Martin, BB.*, dissentiente *Parke, B.*) said, that the question was, whether a contract for the sale of shares in a mine carried on upon the cost-book principle was a contract for the sale of an interest in land under the 4th section of the Statute of Frauds, and therefore void for not being in writing. All that passed by the sale was an interest in the profits or results of the speculation, and there was no such interest in the land as to bring the case within the Statute and to avoid the contract. The rule would therefore be discharged.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

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SATURDAY, JULY 22, 1854.
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### THE REMAINING LAW BILLS BEFORE PARLIAMENT.

THE Session is drawing to a close.<sup>1</sup> It may therefore be useful to take a brief review of the Bills before Parliament relating to the Law, which yet remain for consideration.

There are two Bills relating to the Court of Chancery: the first authorising the Court to assess damages in injunction cases for breach of contract, or against a wrongful act, or for specific performance of an agreement in lieu of sending an issue to be tried before a jury, or leaving the party to prosecute his remedy at Common Law.<sup>2</sup> This is one step towards an amalgamation of the Jurisdiction of Courts of Law and Equity,—affording a complete remedy in the first Court, to which the suitor is entitled to resort. The Common Law Courts have already acquired the power of enforcing a discovery of evidence, and in the Second Common Law Procedure Bill it is proposed to enable them to issue injunctions. It is but equal justice, therefore, that Courts of Equity, where a suit properly originates with them, should be enabled to institute inquiries and afford complete redress. It is of course quite another question, whether there should, or not, be a “fusion” of the *principles* of Equity and Common Law. At present we are dealing only with the jurisdiction and mode of procedure in the respective Courts. We think there can be no objection to this amendment of the Law.

The second Chancery Bill has just been

introduced for the purpose of enabling the Lord Chancellor to accelerate the winding up and completion of all the suits and matters in the offices of the remaining Masters, by the appointment of additional temporary clerks and accountants to assist them in concluding their labours. The Bill also proposes an important addition to the staff of officers of the Court of Chancery in regard to Receivers' accounts. One or more *Clerks of Accounts*, and junior clerks are to be appointed to take the accounts of receivers, consignees, managers, &c., with powers like those of the chief clerks to the Judges. These new officers are to possess the same qualification as the chief clerks, and to be subject to the same regulations and restrictions.

It was rumoured that this Bill was intended to effect a very important alteration in the conduct of suits in the Court of Chancery, and that the duties of the chief clerks of the Judges would be very materially altered by withdrawing from them the investigation of accounts in administration and other suits; but it will be observed by the 12th section of the Bill, at p. 219, *post*, that the duties of the Clerks of Accounts will not be so extensive as was anticipated. An impression, no doubt, prevails, that lawyers are not skilful accountants, but it should be remembered that the complicated parts of book-keeping, and the supposed mystery of “double-entry,” are rarely applicable to accounts in the Court of Chancery. The items generally consist of receipts and payments which are to be investigated and proved, and the difficulty consists not so much in the mode of stating the account, as in the *evidence* to be adduced by which the one party is to be charged with all that he has or might have received, and the other discharged by proof

<sup>1</sup> It is said that the prorogation may take place on the 3rd, but more probably on or about the 10th of August.

<sup>2</sup> See the Bill, p. 198, *ante*.

of payments, and that such payments were properly made. Now, this investigation is palpably more the business of the lawyer than the accountant, though the habits of the latter may enable him more speedily to state and sum up the items; but to ascertain their correctness belongs properly to the former. We cannot admit that solicitors are deficient even in the mechanical part of account-keeping. They are generally well versed in money transactions both for themselves and their clients. Every attorney of any extent of practice has a multitude of receipts and payments to enter, and many of them are professionally concerned for merchants, manufacturers, and traders, and frequently called upon to examine disputed accounts. As a class, therefore, they are fully competent to the accountant business of the Court of Chancery; and we are glad to find from this Bill that the Lord Chancellor confines the selection of the new officers of accounts to the same class of persons as the Judges and Masters' Chief Clerks, viz.,—Attorneys and Solicitors of 10 years' practice.<sup>3</sup>

To these Equity measures may be added a third,—the Court of Chancery Bill for the County *Palatine of Lancaster*, authorising appeals to the Lords Justices. See the Bill, p. 175, *ante*, and Objections, p. 228 *post*.

Next in order may be noticed the *Bankruptcy* Bill for reducing the expensive establishment of the Courts, and offering some advantages to traders who resort thereto, provided they have assets to the amount of 150*l*.<sup>4</sup> This Bill has passed the House of Lords, and we are not aware of any sufficient reason to stop its progress in the lower House.

With regard to the *Common Law* Bills, it is peculiarly desirable that they should pass in the present Session, whereby many important improvements will be effected in the proceedings preparatory to trial, by the service of process out of the jurisdiction, by the examination of parties, the production of documents, and by the speedy reference of accounts;—also at the trial by alterations in the rules of evidence in regard to handwriting, the stamping of deeds, the cross-examination of witnesses, and the adjournment of the trial;—again, in the discovery of the property of judgment

debtors, and enforcing payment under executions in Scotland and Ireland. These and other proposed enactments, and the rules and orders for carrying them into practical effect, will go far to complete the efficiency of our Superior Courts, and enable them to regain the just confidence of the public.

Under this department may be mentioned the Bills which have already received the Royal Assent for the Registration of Bills of Sale, in the same manner as Warrants of Attorneys, Cognovits and Judges' Orders, and the Witnesses' Bill, authorising the parties to an action to compel the attendance of Irish and Scotch witnesses.

In this category may also be classed the proposed Summary Execution on dishonoured *Bills of Exchange*, which we have frequently brought under the notice of our readers, and regarding which we have treated in a separate article at p. 220, *post*.

The Bill for removing doubts as to the *Acknowledgments of Married Women* before Perpetual Commissioners, one of whom is interested in the transaction, or the solicitor in the case, may be expected speedily to pass both Houses, and set at rest a question which affected a vast multitude of titles.

So also the Bill for the Examination of Witnesses *visd voce* in the *Ecclesiastical Courts*, which has passed both Houses.

The amendment of the Law relating to the *Personal Estates of Married Women* has made such progress that it may be expected to arrive at maturity.

The total repeal of the Laws against *Usury* may also probably be effected in the present Session, although introduced very recently. The House of Lords, however, may possibly pause on a measure which affects the landed interest, but the proposition is supported by the Government.

The Bill for amending the Law of *Mortmain* has undergone much discussion in the House of Commons. The clauses requiring wills for charitable purposes to be made three months before death, and notice to be given to the Charitable Trust Commissioners within a month after making the will, have been much opposed. We understand that the promoters of the Bill are willing to abandon the requisition of notice, and shorten the term before death from three months to one; but this concession is not deemed sufficient, and the Bill may yet be negatived. It is certainly inexpedient to confound superstitious uses with those which are purely charitable, such as schools and hospitals, and to prevent a tes-

<sup>3</sup> The Bill, however, authorises the Masters to call in the aid of accountants to wind up the old suits remaining in their offices.

<sup>4</sup> See p. 195, *ante*.

tator who may have no near relations from making a charitable bequest, unless he does so a month before his decease.

The *Stamp Duties*' Bill seems likely to be completed before the prorogation, although it met, in some of its details, with partial opposition. It has made considerable progress in Committee, and no opposition appears to be anticipated in the Upper House.

Some further amendment of the *Criminal Law* may also be anticipated, particularly as to the abolition of Grand Juries at the Central Criminal Court,<sup>5</sup> and the prosecution and punishment of Juvenile Offenders.

The Commons' Inclosure, Turnpike Trusts, and Highway and Borough Rates' Bills, may also be expected to pass, as well as some amendments relating to Friendly Societies, Savings Banks, and the Board of Health.

Of the Bills which remain on the votes and proceedings of the respective Houses, we presume the following will not arrive at maturity :—

Declaratory Suits.  
Arbitration.  
Conveyance of Real Property.  
Criminal Law Consolidation.  
Public Prosecutors.

There are also several Bills relating to Church Property which will probably be deferred ; and the seven Bills on Parliamentary Reform are already doomed, except one on Bribery, but that also is of doubtful success.

The following is a list of the Bills remaining in the *House of Lords* :—

*For 3rd reading.*

Court of Chancery.  
Savings' Banks.  
Merchant Shipping.

*Consideration of Amendments.*

Acknowledgments of Deeds by Married Women.

*In Committee.*

General Board of Health.  
Bankruptcy and Insolvency (*Scotland*).  
Highway Rates.  
Turnpike Trusts Arrangement.

*For 2nd reading.*

Declaratory Suits.  
Arbitration Law Amendment.  
Conveyance of Real Property Act Amendment.

Criminal Justice (Metropolis).  
Criminal Law Consolidation and Amendment (nine Bills).  
Youthful Offenders.  
Inspectors of Nuisances.  
Metropolitan Building Act further Amendment.  
Friendly Societies.

In the *House of Commons* the remaining Bills are as follow :—

*For 3rd reading.*

Benefices' Augmentation.

*Consideration of Amendments.*

Stamp Duties.  
Turnpike Acts' Continuance, &c.  
Borough Rates.  
Bribery, Treating, and Undue Influence at Elections.

*In Committee.*

Chancery Procedure Amendment.  
Common Law Procedure.  
Bills of Exchange and Promissory Notes Registration (No. 2).  
Judgment Execution.  
Court of Chancery (County Palatine of Lancaster).

Prisoners' Removal.  
Prevention of Frauds as to Bills of Exchange.

Mortmain.  
Admiralty Court.  
Ecclesiastical Jurisdiction.  
Highways (Public Health Act).  
Inclosure, &c., of Land.  
Stock in Trade Exemption.  
Metropolitan Sewers' Acts Continuance.  
Episcopal and Capitular Estates' Management.

Arrest of Absconding Debtors (*Ireland*).

*For 2nd reading.*

Usury Laws' Repeal.  
Bankruptcy.  
Public Health Act Amendment.  
Cinque Ports Administration of Justice.  
Dissenters' Marriages.  
Appointment of Public Prosecutors.  
Vacating Seats of Members.  
Abolition of Property Qualification of Members, (No. 2).

*Notices.*

Total repeal of Punishment of Death.  
Amendment of Law of Adultery.  
Apportionment of Rent, &c.  
Abolition of Members' Privilege from Arrest.  
Highways (*Ireland*).

*In Select Committee.*

Friendly Societies' Regulation.  
Trial of Election Petitions and Corrupt Practices.  
Practice at Elections and Bribery, &c., Prevention.  
Corrupt Practices at Elections.

<sup>5</sup> See the Bill, p. 197, *ante*.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### REGISTRATION OF BILLS OF SALE.

17 & 18 VICT. c. 36.

Bills of sale to be void, unless the same or a copy thereof be filed within 21 days, in like manner as warrants of attorney; s. 1.

Defeasance or condition of every bill of sale to be written on the same paper or parchment; s. 2.

Officer of Court to keep a book containing particulars of each bill of sale; s. 3.

Officer entitled to a fee of 1s. for filing bill of sale, and to account for the same; s. 4.

Office copies or extracts to be given on paying as for copies of judgments; s. 5.

Satisfaction may be entered; s. 6.

Interpretation of terms; s. 7.

Extent of Act; s. 8.

The following are the Title and Sections of the Act:—

An Act for Preventing Frauds upon Creditors by secret Bills of Sale of Personal Chattels.

[10th July, 1854.]

Whereas frauds are frequently committed upon creditors by secret bills of sale of personal chattels, whereby persons are enabled to keep up the appearance of being in good circumstances and possessed of property, and the grantees or holders of such bills of sale have the power of taking possession of the property of such persons, to the exclusion of the rest of the creditors: for remedy whereof, be it therefore enacted as follows:—

1. Every bill of sale of personal chattels made, after the passing of this Act, either absolutely or conditionally, or subject or not subject to any trusts, and whereby the grantee or holder shall have power, either with or without notice, and either immediately after the making of such bill of sale or at any future time to seize or take possession of any property and effects comprised in or made subject to such bill of sale, and every schedule or inventory which shall be thereto annexed or therein referred to, or a true copy thereof, and of every attestation of the execution thereof, shall, together with an affidavit of the time of such bill of sale being made or given, and a description of the residence and occupation of the person making or giving the same, or, in case the same shall be made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process shall be issued, and of every attesting witness to such bill of sale, be filed with the officer acting as clerk of the docket and judgments in the Court of Queen's Bench, within 21 days after the making or giving of such bill of sale (in like manner as a warrant

of attorney in any personal action given by a trader is now by law required to be filed), otherwise such bill of sale shall, as against all assignees of the estate and effects of the person whose goods or any of them are comprised in such bill of sale under the laws relating to bankruptcy or insolvency, or under any assignment for the benefit of the creditors of such person and as against all sheriff's officers and other persons seizing any property or effects comprised in such bill of sale in the execution of any process of any Court of Law or Equity authorising the seizure of the goods of the person by whom or of whose goods such bill of sale shall have been made, and against every person on whose behalf such process shall have been issued, be null and void to all intents and purposes whatsoever, so far as regards the property in or right to the possession of any personal chattels comprised in such bill of sale, which at or after the time of such bankruptcy, or of filing the insolvent's petition in such insolvency, or of the execution by the debtor of such assignment for the benefit of his creditors, or of executing such process (as the case may be), and after the expiration of the said period of 21 days, shall be in the possession or apparent possession of the person making such bill of sale, or of any person against whom the process shall have issued under or in the execution of which such bill of sale shall have been made or given, as the case may be.

2. If such bill of sale shall be made or given subject to any defeasance or condition or declaration of trust not contained in the body thereof, such defeasance or condition or declaration of trust shall, for the purposes of this Act, be taken as part of such bill of sale, and shall be written on the same paper or parchment on which such bill of sale shall be written, before the time when the same or a copy thereof respectively shall be filed, otherwise such bill of sale shall be null and void to all intents and purposes, as against the same persons and as regards the same property and effects, as if such bill of sale or a copy thereof had not been filed according to the provisions of this Act.

3. The said officer of the said Court of Queen's Bench shall cause every bill of sale, and every such schedule and inventory as aforesaid, and every such copy filed in his said office under the provisions of this Act, to be numbered, and shall keep a book or books in his said office, in which he shall cause to be fairly entered an alphabetical list of every such bill of sale, containing therein the name, addition, and description of the person making or giving the same, or in case the same shall be made or given by any person under or in the execution of process as aforesaid, then the name, addition, and description of the person against whom such process shall have issued, and also of the person to whom or in whose favour the same shall have been given, together with the number, and the dates of the execution and filing of the same, and the sum for which the

the same has been given, and the time or times (if any) when the same is thereby made payable according to the form contained in the Schedule to this Act, which said book or books, and every bill of sale or copy thereof filed in the said office, may be searched and viewed by all persons at all reasonable times, paying to the officer for every search against one person the sum of 6d. and no more; and that, in addition to the last-mentioned book, the said officer of the said Court of Queen's Bench shall keep another book or index, in which he shall cause to be fairly inserted, as and when such bills of sale are filed in manner aforesaid, the name, addition, and description of the person making or giving the same, or of the person against whom such process shall have issued, as the case may be, and also of the persons to whom or in whose favour the same shall have been given, but containing no further particulars thereof; which last-mentioned book or index all persons shall be permitted to search for themselves, paying to the officer for such last-mentioned search the sum of 1s.

4. The said officer shall be entitled to receive, for his trouble in filing and entering every such bill of sale or a copy thereof as aforesaid, the sum of 1s. and no more; and such officer shall render a like account to the Commissioners of her Majesty's Treasury, and the said Commissioners shall have the like powers in every particular with respect to such account, and the amount of remuneration of such officer, and with respect to any surplus of the fees received by him, as is provided by the 75th chapter of the Statute passed in the 13th and 14th years of the reign of her present Majesty with respect to the officers of the Court of Common Pleas therein-mentioned.

5. Any person shall be entitled to have an office copy or an extract of every bill of sale, or of the copy thereof filed as aforesaid, upon paying for the same at the like rate as for office copies of judgments in the said Court of Queen's Bench.

6. It shall be lawful for any Judge of the said Court of Queen's Bench to order a memorandum of satisfaction to be written upon any bill of sale or copy thereof respectively as aforesaid, if it shall appear to him that the debt (if any) for which such bill of sale is given as security shall have been satisfied or discharged.

7. In construing this Act the following

words and expressions shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such constructions; (that is to say.)

The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trust without transfer, and other assurances of personal chattels, and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt, but shall not include the following documents: that is to say, assignments for the benefit of the creditors of the person making or giving the same; marriage settlements; transfers or assignments of any ship or vessel or any share thereof; transfers of goods in the ordinary course of business of any trade or calling; bills of sale of goods in foreign parts or at sea; bills of lading; India warrants; warehouse keepers certificates; warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented:

The expression "personal chattels" shall mean goods, furniture, fixtures, and other articles capable of complete transfer by delivery, and shall not include chattel interests in real estate, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of any incorporated or joint-stock company, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement, or of the custom of the country, ought not to be removed from any farm where the same shall be at the time of the making or giving of such bill of sale:

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving the bill of sale, so long as they shall remain or be in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or as they shall be used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person.

8. This Act shall not extend to Scotland or Ireland.

### SCHEDULE.

| Name, &c., of the person making or giving the Bill of Sale, or of the person divested of Property. | Name, &c., of the Person to whom made or given. | Whether Bill of Sale, Assignment, Transfer, or what other Assurance, and whether absolute or conditional and Number. | Date of Execution | Date of Filing. | Sum for which made or given. | When and how payable. |
|----------------------------------------------------------------------------------------------------|-------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|-------------------|-----------------|------------------------------|-----------------------|
|                                                                                                    |                                                 |                                                                                                                      |                   |                 |                              |                       |

## WARWICK ASSIZES.

17 &amp; 18 VICT. c. 35.

The preamble recites the 5 & 6 Vict. c. 110.

Recited enactments repealed, and assizes to be held in Warwick; s. 1.

Venue in future proceedings to be "Warwickshire" alone, and parties under recognizance to appear at Warwick; s. 2.

Proceedings commenced in Coventry division to be transferred to Warwick to be disposed of; s. 3.

Offences committed and causes of action accrued in Coventry division before the passing of this Act to be dealt with at Warwick; s. 4.

The following are the Title and Sections of the Act:—

An Act to repeal certain Provisions of an Act of the Fifth and Sixth Years of her present Majesty, concerning the holding of Assizes for the County of Warwick. [10th July, 1854.]

Whereas by an Act passed in the 5 & 6 Vict. c. 110, intituled "An Act to annex the County of the City of Coventry to Warwickshire, and to define the boundary of the City of Coventry," it was enacted and provided that the inhabitants of the city of Coventry should not be liable to be summoned or to serve on any inquest or jury for the county of Warwick elsewhere than within the city of Coventry; and it was thereby also enacted, that the Judges of Assize and Nisi Prius, and others named in her Majesty's Commissions of Oyer and Terminer and Gaol Delivery, should hold their sittings at Nisi Prius, Oyer and Terminer and Gaol Delivery within the said city of Coventry for the said city, and for such other parts of the said county of Warwick as her Majesty, with the advice of her Privy Council, from time to time should order, and at Warwick for so much of the rest of the said county as should not be included in any such order, and that the sheriff of the county of Warwick should give his attendance upon the said Judges and Commissioners, and should cause to be summoned to Warwick and Coventry such grand and petty jurors of the county of Warwick as should be needed for the execution of the said several Commissions: And whereas the division of the said county of Warwick into two assize districts, and the holding of assizes at Coventry, under the said recited enactments, have been found inconvenient: Be it therefore enacted, as follows:—

1. From and after the passing of this Act the said recited enactments shall be repealed, and the assizes for the whole county of Warwick, including the said city of Coventry, shall be holden at Warwick, and the inhabitants of the said city of Coventry shall be liable to be summoned and serve upon all inquests and

juries at the said assizes, in like manner as the other inhabitants of the said county.

2. From and after the passing of this Act, the venue in all matters whatsoever to come before the Judges of Assize and Nisi Prius, Oyer and Terminer and General Gaol Delivery, in the said County of Warwick, shall be "Warwickshire," and the venues "Warwickshire Warwick Division" and "Warwickshire Coventry Division" shall be abolished, and all recognizances entered into by any person or person for appearance at the Coventry assizes, whether to prosecute or give evidence, or to answer or to receive judgment or otherwise, shall be obligatory on the parties bound by such recognizances to appear at the Warwick assizes for the same purpose, and all proceedings requisite and proper to be taken relating thereto shall and may be had and taken in like manner as if such recognizance had been originally entered into and such proceedings taken with reference to the assizes held at Warwick.

3. All indictments, records, and other proceedings preferred, entered, and taken in the Coventry division of the county of Warwick on the day of the passing of this Act, filed and remaining with the Clerk of the Crown and the Associate for the said division, shall be returned to be filed and remain with the Clerk of the Crown and the Associate respectively for the said county of Warwick, and all proceedings and process requisite and proper to be awarded and taken thereon shall and may be awarded and taken as if such indictments, records, and other proceedings had been originally preferred, entered, and taken in the county of Warwick at large.

4. All offences which shall have been committed and all causes of action which shall have accrued in the said Coventry division of the said county before the passing of this Act shall, so far as relates to the Courts of Assize and Nisi Prius, Oyer and Terminer and General Gaol Delivery, be inquired of, heard, and dealt with as if the same had been committed or had accrued in the county of Warwick at large.

## LEGAL OBSERVER EDITION OF NEW STATUTES.

17 VICT., 1854.

THE Acts of the present Session have been printed, with an Analysis of each, as follow. The remainder will be given as speedily as possible:—

Assessed Taxes Amendment, cap. 1, 47 L. O., p. 331.

Income Tax, cap. 17, 48 L. O., p. 46, *ante*.

Commons' Inclosure, cap. 9, p. 64, *ante*.

County Court Extension Act, cap. 16, p. 121, *ante*.

Income Tax (No. 2), cap. 24, p. 134, *ante*.

Registration of Bills of Sale, cap. 36, p. 216.

Warwick Assizes, cap. 35, p. 218.

## COURT OF CHANCERY BILL.

### FOR THE SPEEDY AND EFFICIENT DISPATCH OF BUSINESS.

#### *Appointment of additional temporary Clerks to the Masters.*

UPON a suit in which any proceeding may be depending before a Master becoming abated by death, marriage, or otherwise, or becoming defective by reason of some change or transmission of interest or liability, it shall be lawful for the Master to summon the parties, or their solicitors, and to require such information as may seem necessary respecting persons by and against whom the suit and proceedings ought to be revived, with liberty to proceed in the absence of any of the parties or solicitors; (s. 1).

The Master may certify as to the abatement, &c.; (s. 2).

Order of revivor, &c., shall be drawn up on Master's certificate; (s. 3).

Upon Master's certificate of abatement, &c., Court may order prosecution or disposal of suit; (s. 4).

In the event of the parties or their solicitors refusing or neglecting, within a time to be fixed by the Master, to file or to bring before the Court any such certificate, or to serve any order when drawn up, then by direction of the Master the certificate may be filed or brought before the Court, or the order may be served, by the solicitor for the time being to the Suitors' Fund; and the Court is empowered to order payment of the costs and expenses of the solicitor to the Suitors' Fund out of such of the funds in the suit or by such parties as to the Court shall seem just; and in case payment thereof cannot be obtained by any of the means aforesaid, the same, by the direction of the Court, may be paid out of the Suitors' Fund; (s. 5).

In any cause, matter, or thing which may from time to time be depending before or have been referred to a Master, it shall be lawful for him, in such way as he may think fit, to obtain the assistance of an accountant the better to enable him to make any report or certificate, and to act upon the certificate of such accountant; and the allowances in respect of fees to the accountant shall be regulated by the Taxing Master of the Court; (s. 6).

Master may certify specially to obtain opinion of the Court; (s. 7).

It shall be lawful for the Lord Chancellor to appoint a fit person to act in the office of any Master as an additional temporary clerk, and in assistance to the Master's ordinary clerks, in such manner as the Master may direct; and every such temporary clerk may be removed by the Lord Chancellor as he may think fit, and shall receive, so long as he shall be employed, such salary as the Lord Chancellor

shall, with the approbation of the Lords' Commissioners of her Majesty's Treasury order, but shall not be entitled to or receive any compensation upon or by reason of the Master being released from his duties, or removed by resignation, death, or otherwise; (s. 8).

#### *Appointment of Clerks of Receivers' Accounts.*

It shall be lawful for the Lord Chancellor to constitute and appoint an officer, or if it shall seem to him necessary or expedient two officers, of the Court of Chancery, to be styled "the Clerk" or "the Clerks of Receivers' Accounts," and to fill up from time to time such vacancies as may occur in that office; (s. 9).

The several provisions respecting the qualifications,<sup>1</sup> removal from office, striking off the rolls, tenure of office, prohibitions, prosecutions, penalties, and punishments of the chief clerks attached to the Master of the Rolls and the Vice-Chancellors respectively, contained in the sections 17, 18, 20, 21, 24, 25, of the 15 & 16 Vict. c. 80, are extended to the clerks of receivers' accounts; (s. 10).

Each of the clerks of receivers' accounts may appoint, with the approbation of the Lord Chancellor, a junior clerk to act under and assist him in the discharge of his duties, and to be removeable by him; (s. 11).

It shall be the duty of the clerks of receivers' accounts to examine and settle under the direction and control of the Court, all such accounts of receivers, consignees, managers, and others as the Lord Chancellor, with the advice and assistance of the Vice-Chancellors, or any two of the same Judges, may, by general order, or as any special orders of the Court or of the Judges thereof may direct; (s. 12).

Their proceedings to be regulated by general order; (s. 13).

The clerks of receivers' accounts shall have power to issue advertisements, to summon parties and witnesses, to administer oaths, to take affidavits, to receive affirmations, and, when so directed by the Court or a Judge thereof, to examine parties and witnesses, either upon interrogatories or *vid voce*, as the Court or Judge shall direct; (s. 14).

Attendance before them may be enforced, &c.; (s. 15).

Recognizances of receivers, &c., not hereby affected; (s. 16).

Salaries to be fixed by the Lord Chancellor; (s. 17).

Salaries to be paid out of the Fee Fund; (s. 18).

## ACKNOWLEDGMENT OF DEEDS BY MARRIED WOMEN.

### BILL TO REMOVE DOUBTS.

It being apprehended that deeds executed by married women may be liable to be invalidated by the circumstance that the Judge, or Master

<sup>1</sup> The persons qualified are the chief clerks of the Masters, and solicitors or attorneys of 10 years' practice.



in Chancery, or one or both of the Commissioners, taking the acknowledgment, may be interested or concerned, either as a party or otherwise, in the transaction giving occasion for such acknowledgment, it is proposed to enact that—

No deed which has been acknowledged, or which shall hereafter be acknowledged by a married woman before a Judge of one of the Superior Courts of Westminster, or a Master in Chancery, or before two of the perpetual Commissioners or two special Commissioners to be respectively appointed as by the 3 & 4 Wm. 4, c. 74, is required, shall be impeached or impeachable at any time after the certificate of such acknowledgment has been filed of record in the Court of Common Pleas at Westminster, by reason only that such Judge or Master in Chancery, or such Commissioners, or either of them, was or were interested or concerned, either as a party or parties or otherwise, in the transaction giving occasion for such acknowledgment; (s. 1).

If any proceeding instituted before July 13, 1854, in the Court of Common Pleas, for the purpose of quashing or taking off the file of records of the Court any certificate of an acknowledgment of a deed by a married woman, on the ground that such Judge or Master in Chancery, or either of such Commissioners, was interested or concerned as aforesaid, shall be pending at the passing of this Act, the Court, at the instance of either party, may stay all proceedings therein, and make such orders for payment of the costs of such proceeding or any part thereof, and such other orders, as the justice of the case may require; (s. 2).

### BRIBERY PREVENTION BILL.

THE 10th clause of the amended Bill requires the attention of solicitors engaged in the election of members of Parliament. The effect of it seems to be, that if the solicitor has a vote for the place for which his client is a candidate, he cannot recover for his services, and any payment for them is illegal:—

“No person acting as counsel, attorney, agent, poll clerk, or in any other capacity whatsoever for any candidate, for the purposes of any election, and who shall himself be an elector entitled to vote at such election, shall be entitled to any consideration, reward, or payment for any personal services rendered by him to or on behalf of such candidate in any such capacity; and any consideration, reward, or payment, knowingly made or given by any candidate or his agent, to any elector for any services in any such capacity, shall, as regards any such candidate, be deemed and taken to be an illegal payment; and any elector knowingly receiving or taking the same shall be deemed incapable of voting at such election, and in case he shall vote at such election, he shall be liable to forfeit the sum of 50*l.* to any

person who shall sue for the same, together with full costs of suit.”

The attorneys who are engaged in contested elections will, of course, omit to register their names as electors.

### SUMMARY EXECUTION ON BILLS OF EXCHANGE BILL.

It will be observed by the following statement and reasons against this Bill, that the grounds of opposition rest mainly on the side of the public; and that the professional objection is urged only in reference to the difficulty or impracticability of carrying the provisions of the Act into effect. This is a judicious course of argument. It is at present hopeless to address the Legislature in opposition to any measure (supposed to be generally beneficial), on the sole ground that it will injure the attorneys. The members of the Profession, however, need not hesitate in stating their objections to any alteration of the law, provided the public interests are involved in the measure. Their objections may, indeed, be viewed with suspicion, and not be admitted unless they are well-founded; but as the practical working of a proposed new law, or the alteration of an old law, can best be appreciated by the practitioners, they are able to confer incalculable benefit on the community by applying their experience and acuteness in detecting and exposing the fallacy of objectionable projects. The interests of the public are inseparably connected with the interests of the Profession. The administration of justice on reasonable terms, and with all practicable speed, is not only beneficial to the suitor, but ultimately to the attorney. Delay and expense drive away clients.

We trust that the following objections which have been submitted to most of the lawyers in Parliament will prevail against the Bill now under consideration:—

#### REASONS AGAINST THE BILL, SUGGESTED BY THE INCORPORATED LAW SOCIETY.

This Bill proposes to establish a new proceeding to enforce payment of unpaid inland bills of exchange by means of a notarial protest, to be recorded in a new register office, and of a Judges' order for payment founded upon it, which proceeding is to be adopted at the option of the holder instead of the present mode of proceeding in the Superior Courts.

The Bill proceeds on the assumption that a protest by a notary is evidence of the requisites, which at present entitle the holder to recover in an action against the drawer or indorsers; but, in fact, it affords no such evidence. 1*st*—The notary knows nothing as to the handwrit-

ing of any of the parties, and therefore his protest affords no proof of that fact. 2nd. The notary often presents the bill for the purpose of protest at a banker's, after banking hours,—a presentment which in no way binds the drawer or indorsers; and the notary knows nothing whatever as to any previous presentment. 3rd. The notary has no knowledge, and is unable to state, whether notice of the dishonour by the acceptor has been given in due time to the other parties on the bill.

1. The Bill is unnecessary and inexpedient, the present law being sufficient, or an alteration preferable to a new system.

The improvements which have been effected in the course of proceeding in the Common Law Courts render the new remedy proposed by the Bill unnecessary and inexpedient. Where there is no defence to an action on a bill of exchange, judgment may now be obtained in eight days. The Legislature has deemed it right to suspend execution for eight days after judgment on a writ of summons, and it is submitted that a period of sixteen days before allowing a holder of a bill to seize by legal process the person or property of the parties to the bill, is as short as is expedient, just, or necessary. But if in the judgment of the Legislature that time be deemed too long a period before execution should be allowed to issue, surely it would be preferable to alter the present law in that respect, rather than to introduce a new system of procedure.

2. The operation of the Bill will be oppressive, particularly on indorsers of bills of exchange.

The Bill will operate with great severity on the indorsers of bills of exchange, who, in case of the default of the acceptor, will be liable to execution at the expiration of six days, although they may have received no notice of the dishonour, or from the shortness of the period allowed, may not have it in their power to inquire into the points necessary to be determined before paying or resisting the demand.

3. The strict conditions on which a defence is to be permitted are unreasonable.

It will be a great hardship on parties to a bill of exchange, who may often be in entire ignorance of the facts, or may have a perfectly good defence against the holder,—which at the moment they may be unable to substantiate, or which may depend on negative circumstances,—to throw the burden of proof on the defendant, who, according to the provisions of the present Bill, is to show by affidavit that his defence is sufficient, and also (if the Judge think fit) to find security for the debt and costs.

4. The preference given to bill-holders will be unjust to other creditors.

The Bill will be injurious to creditors in general, by giving a preference to the holder of a

bill of exchange,—enabling him in the short time of six days to take possession under an execution of the debtor's property; and consequently the debtor, in order to do justice to his creditors in general, and prevent such undue preference must be driven to commit an act of bankruptcy for the purpose of securing a just and an equal distribution of his assets.

5. The danger of collusion in favour of fictitious creditors will be increased.

The provisions of the Bill will afford means of collusion between dishonest debtors and creditors to the prejudice of *bona fide* creditors; for a debtor might obtain credit to a large amount without giving acceptances, and before the time of such credit expired, grant bills to fictitious or favoured creditors, friends, or relations, and enable them to issue execution against the whole of the property.

6. No just ground for a better remedy on the non-payment of bills than bonds or covenants.

There is no just reason for granting to the holders of bills of exchange a better remedy for non-payment, than to the parties to whom bonds and covenants for the payment of money have been executed, and who in default of payment must resort to an action at law. Formerly actions on bonds were placed on a higher footing than actions on simple contract debts, inasmuch as where there was no defence, the judgment was final, and not interlocutory; but now under the Common Law Procedure Act, final judgments may be obtained in all undetended actions at the expiration of eight days.

7. The "summary diligence" of Scotland not applicable to England.

The "summary diligence" on bills of exchange having always prevailed in Scotland, there has been no opportunity of comparing its effects with the mode of proceeding in England; and the bill transactions there being comparatively few in number, the example does not justify its adoption in England in lieu of the improved and sufficient mode of proceeding in the Common Law Courts.

8. This alteration is one only of 19 differences in the laws of Scotland and England relating to bills.

It is submitted that it is altogether inexpedient to pass the Bill, even if no other objections could be alleged against it, because it forms but a small part only of the proposed plan of assimilating the laws of England, Ireland, and Scotland. In the statement and questions just issued by the mercantile law Commissioners, there are no less than 19 points of difference between the laws of England and Ireland and those of Scotland with regard to bills of exchange. In order to determine how many of these 19 differences in the law of Scotland are preferable, or not, to those of England and Ireland, or in what respects they may both require alteration, much consideration is

necessary. The present Bill proposes to deal with No. 15, being one only of these 19 points. It is submitted that the whole of these conflicting matters should be considered together, and that it is dangerous to legislate upon the entire subject by fractions, or upon one only of many subjects, each bearing more or less on the others.

9. The whole law of bills of exchange should be comprised in one Act.

Although the present measure relates chiefly to the summary mode of procedure to enforce the payment of a bill, yet it involves also several important alterations of the law in regard to bills of exchange generally; for instance, it proposes to throw the burden of proof on the debtor, and deny him a trial, unless he can give, not merely bail, but unconditional security for payment of the debt and costs; and under the 19th section, effects a material alteration in the bankrupt law. Even if it could be considered as a mere *procedure* bill, still it is important that the law, which is thus to be carried into effect differently from the present course, should be settled, before effecting so important a change in the mode of procedure.

It is, therefore, submitted, that at all events this Bill, which is confined to one point, should be postponed till the Commissioners have made their report upon the several important rules in the laws of Scotland, which differ from those of England and Ireland, and the alterations which they recommend to be adopted.

10. The Act cannot be carried into effect in towns where there are no notaries, unless attorneys be authorised to note and protest bills for the purposes of the Act.

It is further submitted, that it will be difficult, if not impracticable, to carry the Act into effect in the larger part of the towns of England and Wales, because there are only 128 towns where notaries have been appointed. It will, consequently, give a most unfair advantage to those towns in which notaries are to be found.

By the 9 & 10 Wm. 3, c. 17, it is provided that bills of exchange may be protested by a notary public, and, "in default of such notary public, by any other substantial person of the city, town, or place, in the presence of two or more credible witnesses, refusal or neglect being first made of due payment of the same." But these provisions are inadequate for the purposes contemplated in the Bill; for, whether the two credible witnesses are to be present at the time of the presentation of the bill for payment, or at the time of signing the protest, or at both those times, it is a burdensome and inconvenient course of proceeding to require three persons to certify a fact, which, in London and other places, is done by a single notary, and which might be effectually done by a duly qualified attorney resident on the spot. And although by the 3 & 4 Wm. 4, c. 70, s. 2, the Master of the Court of Faculties at Doctors' Commons may admit a sufficient number of

attorneys of the Superior Courts to act as notaries beyond ten miles of the city of London "for the convenience and accommodation of each district," such admissions are entirely in the discretion of the Master of Faculties; and the admission to the office of notary being subjected to a stamp of 30*l.*, besides the fees of office, the appointment is rarely sought for; and, consequently, the means of carrying the Act into full or convenient operation will fail, unless the attorneys and solicitors are authorised to perform the duty of noting and protesting the bills for the purposes of the Act.

The *Manchester Law Association* urge the following objections against the Bill:—

"It will give holders of bills and notes very great facilities for recovering the amounts; but it will have a serious effect on parties to bills, especially *indorsers*, who may have the bills protested and registered against them, without expecting it. True they may pay as soon as they are served with an order; but this will not be a very pleasant position to be placed in, without fault of theirs.

"But on *the community at large* the Act, if it passes, will operate very prejudicially. A creditor who is not a bill holder will be overreached by the bill holder; he may have sued for his demand, and used all diligence to get it, but he cannot, under the most favourable circumstances, occupy less than a month in having his cause tried, and he may have to wait six, if the assizes do not suit; meanwhile the bill holder may come in and sweep off all the debtor's property. This cannot be right; one creditor should not have more facilities than another.

"The measure seems uncalled for and inexpedient as well as *unjust to all creditors, except holders of bills or notes*; and even as regards these parties, it may be very doubtful whether the advantages they are to gain (at the expense of all others) are not more than counter-balanced by the uncertainty which will be thrown over all commercial dealings. For against these instruments no care or caution could be an effectual guard, even if there were the means of searching the registries, which the Bill, as now framed, does not provide. The process may suit *Scotland*, where the system of bills is so much at variance from that which prevails in England; but it seems wholly inapplicable in such a community as ours, and where such a different mode of payment is generally acted upon.

"The effect of clause 19 will be, to make void any judgment or order obtained under the Act, and every execution issued thereon within *two months* of the filing of a petition for adjudication of bankruptcy against the debtor. The almost inevitable result of this will be, to drive all estates into bankruptcy, whether they be large or small; for creditors who have obtained a preference under the Act are not likely to come into any composition, or to give time.

"And it may be observed, that where there are several bills or notes, only those of early date will derive any benefit.

"To small and unsecured creditors, more especially, the measure, if passed, will be a positive injustice."

The 42 Notaries of Liverpool, who are also Attorneys, have petitioned against the restoration of the clause for letting in their brethren, alleging that they have served an apprenticeship, and paid premiums, stamps, and fees of admission.

## LAW OF ATTORNEYS AND SOLICITORS.

### TAXATION OF BILL OF COSTS OF MORTGAGEE'S SOLICITOR.—PRESSURE.

THE executrix of a mortgagor being desirous to pay off the mortgage, and have a transfer to a trustee for her, the transfer was prepared and approved, and the bill of costs of the mortgagee's solicitor, amounting to 18*l.* odd, was sent on December 20, 1850, and an appointment made to complete two days afterwards. The deed was executed at the meeting upon the principal and interest being paid, and 10*l.* was tendered for the costs, but the solicitors declined to part with the title-deeds until the remainder of their bill, for which they claimed a lien, was paid. The amount was paid under protest, and in February, 1853, the executrix petitioned for a taxation, on the ground of pressure and an overcharge of five guineas "for many attendances and very numerous letters from 1842 to 1851," to the petitioner.

The *Master of the Rolls*, in dismissing the petition with costs, said, "You ask me to reverse *Re Browne* (15 Beav. 61), which was affirmed by the Lords Justices (1 De G., M & G. 322). The Court will not open the settlement of a bill of costs, unless there be both pressure and objectionable items, or the overcharges are so gross as to amount to fraud. This bill was paid only under this pressure: the solicitor says, 'I have a lien for my costs, and will not deliver up the deeds unless you pay the bill.'" *In re Finch*, 16 Beav. 585.

## LAW OF COSTS.

### OF DISCLAIMING DEFENDANT IN FORECLOSURE SUIT.

The *Master of the Rolls*, in the case of *Ford v. Earl of Chesterfield*, 16 Beav. 516, as to the

right of a disclaiming defendant to costs in foreclosure suits, said, that the effect of all the later authorities was—"First, that in a suit for foreclosure and redemption of mortgages, where a defendant disclaims, in such a manner as to show that he never had and never claimed an interest, at or after the filing of the bill, then he is entitled to his costs. Secondly, if a defendant having an interest, shows that he disclaimed or offered to disclaim before the institution of the suit, there also he is entitled to his costs. Thirdly, that where a defendant having an interest, allows himself to be made a party to the suit, and does not disclaim or offer to disclaim till he puts in his answer or disclaimer, in that case he is not entitled to his costs. \* \* \* There is another point to which I must advert, viz., the filing of the replication by the plaintiff. The rule I take to be this:—that if a defendant disclaim, and then the plaintiff replies to the disclaimer, and the defendant is, in consequence, compelled to go into evidence in support of the statement in his answer, the plaintiff must pay his costs, but not otherwise. In this case, no evidence has been gone into, and therefore the defendant is not entitled to his costs."

### WHERE ONE OBJECT OF BILL FAILED.

Where, of the two objects sought by a bill, the one succeeded and the other failed, and it was impossible properly or accurately to separate the costs properly attributable to each, a decree was made without costs on either side. *Rochdale Canal Company v. King*, 16 Beav. 630.

## CHURCH LEASEHOLDS. — CAPITULAR ESTATES' ACT.

I SUBJOIN a copy of a *model* reservation clause, which the Dean and Chapter of Durham and the Ecclesiastical Commissioners have the modesty to ask a party to accede to on the enfranchisement of some 180 acres of land, within two miles of the city of Durham, held under the chapter.

After such anomalous enfranchisement, could the land be called *freehold*? The owner could hardly call the water, supposing there is any, his own. There is also a special stipulation, reserving woods, underwoods, and trees.

Will it now be said that the Church does not take abundant care of its own interests? In fact they sell the freehold, reserving everything but water and game.

### DUNELMENSIS.

"Save and except out of these presents, and

the grant and release hereby made unto the said Dean and Chapter of Durham, their successors and assigns, *all mines and pits now being and to be opened, and all other mines, seams, and beds of coal and other minerals whatsoever, in or under the said lands, hereditaments, and premises respectively, or any of them, or any part or parts thereof respectively.* And also, except and always reserved out of these presents and the grant made, all such *rights of way, and other rights and easements, and so much of the said lands, or grounds, and premises as shall be necessary or proper for having access to, and winning, getting, and carrying away, and, if desired, of converting, manufacturing, or otherwise disposing of the said minerals and substances hereinbefore excepted.* And also, all or any other *minerals and substances whatsoever, of or belonging to the said Dean or Chapter of Durham, their successors, grantees, lessees, or assigns, or of or belonging to any other corporation, or any other person or persons arising or produced from or under the lands hereby granted and released, or intended so to be, or any other lands or ground for agents and workmen's houses, pit and heap-room, furnaces or engine-houses, and all other conveniences, together with full and exclusive power for the said Dean and Chapter of Durham, and their grantees and assignees, to use any existing shafts, levels, adits, roads, or ways, or to make and exclusively have, and use any shafts, levels, adits, roads, or ways, drains or watercourses, through, within, under, over, or across the said lands or grounds for the purposes before-mentioned, or any of them.* And also, for all or any of the purposes aforesaid, *to form any road or way to make any cutting, embankment, bridge, tunnel, or other work, and to lay down iron rails or other materials, and for the purposes of using any road or way, to erect and to have any engine houses, station-houses, or other erections, or any depôts, or yards, or other conveniences, and to travel on any such road or way with any engine, and in any manner whatsoever, whether of present use or future invention.* And also, with full power for the said dean and chapter, their successors and grantees, lessees, and assigns, to do any act for the foregoing exceptions, or any of them, in, upon, over or under, or with respect to the said lands and grounds that they could have done were they the sole and absolute owners of the fee simple in possession thereof, but such way, leaves, and rights, so hereinbefore reserved to the said dean and chapter, their successors and assigns shall not be liable to be defeated or destroyed by effluxion of time or non-user of the same. And all and singular, the rights, liberties, matters, and things hereinbefore excepted and reserved to the said dean and chapter, their successors, grantees, lessees, and assigns shall be taken and considered as commencing, and to be had and exercised from the execution of these presents. They, the said Dean and Chapter of Durham, their successors and assigns paying annually reasonable compensation for spoil of ground, to be occa-

sioned by the exercise of the powers hereby excepted and reserved as aforesaid, such annual compensation, if the parties cannot agree to be estimated by the adjudication of two indifferent persons, one to be chosen by each party, or by the umpire of such two indifferent persons."

## FEES OF THE COURTS OF LAW.

THE following is extracted from a Return of all the Fees received by the Masters' of the Courts of Queen's Bench, Common Pleas, and Exchequer of Pleas, from the 1st day of Michaelmas Term, 1852, to the day before Michaelmas Term, 1853, inclusive, distinguishing the amounts received for each respective class of fees :

Of the salaries and expenses paid out of such receipts during the same period, distinguishing the amount of salaries from the expenses :

Of the pensions paid during the same period to retired officers of those Courts :

And, of the compensations paid during the same period to the holders of abolished offices of such Courts.

### 1. QUEEN'S BENCH.

#### Receipts.

|                                                                            | £     | s. | d. |
|----------------------------------------------------------------------------|-------|----|----|
| 27,334 writs (except writs of trial or subpoena), at 5s. . . . .           | 6,833 | 10 | 0  |
| 565 concurrent alias, pluries, or renewed writs, at 2s. 6d. . . . .        | 70    | 12 | 6  |
| 5,034 writs of trial and subpoena before a Judge or Master, at 2s. . . . . | 503   | 8  | 0  |
| 206 writs of subpoena before the sheriff, at 1s. . . . .                   | 10    | 6  | 0  |
| 8,476 appearances entered, at 2s. . . . .                                  | 847   | 12 | 0  |
| 844 appearances, each defendant after the first, at 1s. . . . .            | 42    | 4  | 0  |
| Filing 26,359 affidavits, writs, or other proceeding, at 2s. . . . .       | 2,635 | 18 | 0  |
| Amending 136 writs or other proceeding, at 2s. . . . .                     | 13    | 12 | 0  |
| 601 ordinary rules, at 1s. . . . .                                         | 30    | 1  | 0  |
| 720 special rules, not exceeding six folios, at 4s. . . . .                | 144   | 0  | 0  |
| 404 special rules, exceeding six folios, per folio, at 6d. . . . .         | 10    | 2  | 0  |
| 5,505 judgments by default, at 5s. . . . .                                 | 1,376 | 5  | 0  |
| 3,363 final judgments, otherwise than judgment by default, at 10s. . . . . | 1,681 | 10 | 0  |
| Taxing bills of costs . . . . .                                            | 1,333 | 14 | 0  |
| 118 references to the Master, at 10s. . . . .                              | 100   | 10 | 0  |

<sup>1</sup> The return comprises returns from other officers of the Courts, but they are not at present complete. The extracts, therefore, are confined to the Masters' returns.—Ed. L. O.

Payments of money into Court,  
viz.:

|                                                                                                                         | £       | s. | d. |
|-------------------------------------------------------------------------------------------------------------------------|---------|----|----|
| 200 under 50 <i>l.</i> , at 5 <i>s.</i> . . . . .                                                                       | 50      | 0  | 0  |
| 49 under 100 <i>l.</i> , at 10 <i>s.</i> . . . . .                                                                      | 24      | 10 | 0  |
| 66 above that sum, at 20 <i>s.</i> . . . . .                                                                            | 66      | 0  | 0  |
| 269 certificates, at 1 <i>s.</i> . . . . .                                                                              | 13      | 9  | 0  |
| 1,221 office copies of <i>præcipes</i> , or<br>other proceedings, 6 <i>d.</i> per folio                                 | 436     | 17 | 6  |
| 11,162 searches, if not more than<br>two Terms, at 6 <i>d.</i> . . . . .                                                | 279     | 1  | 0  |
| 7,918 searches, exceeding two<br>and not more than four Terms,<br>at 1 <i>s.</i> . . . . .                              | 395     | 18 | 0  |
| 195 searches, exceeding four<br>terms, or a general search, at<br>2 <i>s.</i> 6 <i>d.</i> . . . . .                     | 24      | 7  | 6  |
| 1,804 affidavits, affirmations, &c.,<br>taken before the Master, at 1 <i>s.</i>                                         | 90      | 4  | 0  |
| Filing two recognizance or secu-<br>rity in ejectment or error,<br>at 2 <i>s.</i> 6 <i>d.</i> . . . . .                 | 0       | 5  | 0  |
| Six allowances and justification<br>of bail, at 3 <i>s.</i> . . . . .                                                   | 0       | 18 | 0  |
| Filing 412 affidavits and inrol-<br>ling articles previous to the ad-<br>mission of attorneys, at 5 <i>s.</i> . . . . . | 103     | 0  | 0  |
|                                                                                                                         | £17,117 | 14 | 6  |
| Received on account of fees<br>under the old table, altered<br>on 24th November, 1852 . . . . .                         | 1,324   | 18 | 10 |
|                                                                                                                         | £18,442 | 13 | 4  |

Disbursements.

|                                                                                                                                                                     | £       | s. | d. |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|----|----|
| Five Masters . . . . .                                                                                                                                              | 6,000   | 0  | 0  |
| Twenty-three clerks . . . . .                                                                                                                                       | 5,911   | 5  | 8  |
| One messenger . . . . .                                                                                                                                             | 72      | 10 | 0  |
| One ditto to the Court . . . . .                                                                                                                                    | 80      | 0  | 0  |
| Three tipstaves, to make the in-<br>come to each of 150 <i>l.</i> per<br>annum . . . . .                                                                            | 281     | 1  | 4  |
| General disbursements during the<br>same period, for housekeeper,<br>laundresses, rent, taxes, rates,<br>stationery, books, furniture,<br>repairs, &c., &c. . . . . | 1,190   | 13 | 2  |
| Total . . . . .                                                                                                                                                     | £12,535 | 10 | 2  |

|                           |         |    |   |
|---------------------------|---------|----|---|
| Amount received . . . . . | £18,442 | 13 | 4 |
| Ditto disbursed . . . . . | 13,535  | 10 | 2 |
|                           | £4,907  | 3  | 2 |

No pensions or compensations have been  
paid by the Masters during the above period.

(Signed) FORTUNATUS DWARRIS.  
A. D. CROFT.  
R. GOODRICH.  
JAS. BUNCE.  
C. R. TURNER.

2. COMMON PLEAS.

Receipts.

|                                                                                            |        |    |   |
|--------------------------------------------------------------------------------------------|--------|----|---|
| 20,241 writs, except writ of trial<br>or subpoena, at 5 <i>s.</i> . . . . .                | £5,060 | 5  | 0 |
| 262 concurrent, alias, pluries, or<br>renewed writs, at 2 <i>s.</i> 6 <i>d.</i> . . . . .  | 39     | 15 | 0 |
| 137 writs of trial, at 2 <i>s.</i> . . . . .                                               | 13     | 14 | 0 |
| 2,404 writs of subpoena before a<br>Judge or Master, at 2 <i>s.</i> . . . . .              | 240    | 8  | 0 |
| 123 writs of subpoena before the<br>sheriff, at 1 <i>s.</i> . . . . .                      | 6      | 3  | 0 |
| 4,773 appearances entered, at 2 <i>s.</i>                                                  | 577    | 6  | 0 |
| 519 appearances, each defendant<br>after the first, at 1 <i>s.</i> . . . . .               | 25     | 19 | 0 |
| Filing 8,713 affidavits, writs, or<br>other proceedings, at 2 <i>s.</i> . . . . .          | 871    | 6  | 0 |
| Amending 525 writs or other<br>proceedings, at 2 <i>s.</i> . . . . .                       | 52     | 10 | 0 |
| 484 ordinary rules, at 1 <i>s.</i> . . . . .                                               | 24     | 4  | 0 |
| 493 special rules, not exceeding<br>six folios, at 4 <i>s.</i> . . . . .                   | 98     | 12 | 0 |
| 283 special rules exceeding six<br>folios, per folio 6 <i>d.</i> . . . . .                 | 7      | 2  | 6 |
| 3,954 judgments by default, at 5 <i>s.</i>                                                 | 988    | 10 | 0 |
| 1,510 final judgments, otherwise<br>than judgment by default, at<br>10 <i>s.</i> . . . . . | 755    | 0  | 0 |
| Taxing bills of costs . . . . .                                                            | 815    | 6  | 0 |
| References to the Master . . . . .                                                         | 44     | 0  | 0 |

Payments of money into court, viz.

|                                                                                                     |     |    |   |
|-----------------------------------------------------------------------------------------------------|-----|----|---|
| 151 for every sum under 50 <i>l.</i> ,<br>at 5 <i>s.</i> . . . . .                                  | 37  | 15 | 0 |
| 28 under 100 <i>l.</i> , at 10 <i>s.</i> . . . . .                                                  | 14  | 0  | 0 |
| 50 above that sum, at 20 <i>s.</i> . . . . .                                                        | 50  | 0  | 0 |
| 72 certificates, at 1 <i>s.</i> . . . . .                                                           | 3   | 12 | 0 |
| 5,596 office copies of <i>præcipes</i> ,<br>or other proceedings . . . . .                          | 139 | 18 | 0 |
| 8,785 searches, if not more than<br>two terms . . . . .                                             | 219 | 12 | 6 |
| 73 searches exceeding two, and<br>not more than four terms . . . . .                                | 3   | 13 | 0 |
| 146 searches exceeding four<br>terms, or a general search . . . . .                                 | 18  | 5  | 0 |
| 2,648 affidavits, affirmations, &c.<br>taken before the Master, at 1 <i>s.</i>                      | 132 | 8  | 0 |
| 5 allowances and justification of<br>bail . . . . .                                                 | 0   | 15 | 0 |
| Filing 6 affidavits and inrolling<br>articles previous to the admis-<br>sion of attorneys . . . . . | 1   | 10 | 0 |
| 185 affidavits filed . . . . .                                                                      | 9   | 5  | 0 |
| 2 affidavits delivered out . . . . .                                                                | 0   | 5  | 0 |
| 4 error certifying a record, each<br>roll 10 <i>s.</i> . . . . .                                    | 2   | 0  | 0 |
| 34 issues entered, at 7 <i>s.</i> . . . . .                                                         | 11  | 18 | 0 |
| 659 judgments, final, at 7 <i>s.</i> . . . . .                                                      | 230 | 13 | 0 |
| 22 searches, per term . . . . .                                                                     | 0   | 5  | 6 |
| 2 special references . . . . .                                                                      | 2   | 2  | 0 |
| 1 examination of witnesses . . . . .                                                                | 1   | 1  | 0 |
| 1 bond settled . . . . .                                                                            | 0   | 10 | 6 |
| 27 re-sealing writs . . . . .                                                                       | 0   | 15 | 9 |
| 347 writs of execution . . . . .                                                                    | 17  | 7  | 0 |

£10,510 11 9

*Disbursements.*

|                                         | £       | s. | d. |
|-----------------------------------------|---------|----|----|
| Masters' salaries . . . . .             | 6,000   | 0  | 0  |
| Clerks' salaries . . . . .              | 3,040   | 0  | 0  |
| Messenger, porter, and laundress        | 100     | 0  | 0  |
| Rent, rates and taxes, stationery       |         |    |    |
| and books, &c. . . . .                  | 560     | 1  | 3  |
| <i>Pensions.</i> —Late prothonotary . . | 805     | 11 | 4  |
| Late master . . . . .                   | 270     | 0  | 0  |
| Ushers, criers, and trainbearer of      |         |    |    |
| the Court, pursuant to Treas-           |         |    |    |
| ury Orders, to make up their            |         |    |    |
| salaries . . . . .                      | 418     | 7  | 8  |
|                                         | £11,194 | 0  | 3  |

The expenses are calculated as nearly as possible, in consequence of the return containing a portion of two quarters.

## 3. EXCHEQUER OF PLEAS.

*Receipts.*

|                                                                   | £      | s. | d. |
|-------------------------------------------------------------------|--------|----|----|
| For writs (except writs of trial or subpoena) . . . . .           | 10,011 | 5  | 0  |
| Concurrent, alias, pluries, or renewed writs . . . . .            | 79     | 2  | 6  |
| Writs of trial . . . . .                                          | 19     | 2  | 0  |
| Writs of subpoena before a Judge or Master . . . . .              | 496    | 8  | 0  |
| Writs of subpoena before the sheriff . . . . .                    | 12     | 18 | 0  |
| Appearances entered . . . . .                                     | 1,060  | 14 | 0  |
| Appearances, each defendant, after the first . . . . .            | 64     | 10 | 0  |
| Filing affidavits, writs, or other proceedings . . . . .          | 1,906  | 18 | 0  |
| Amending writs or other proceedings . . . . .                     | 111    | 2  | 0  |
| Ordinary rules . . . . .                                          | 46     | 7  | 0  |
| Special rules . . . . .                                           | 134    | 0  | 0  |
| Special rules exceeding six folios, per folio . . . . .           | 8      | 8  | 0  |
| Judgments by default . . . . .                                    | 2,150  | 10 | 0  |
| Final judgments otherwise than judgments by default . . . . .     | 1,513  | 0  | 0  |
| Taxing bills of costs . . . . .                                   | 1,485  | 7  | 0  |
| References to the Master . . . . .                                | 71     | 0  | 0  |
| Payments of money into Court, viz.: . . . . .                     |        |    |    |
| Under 50 <i>l.</i> . . . . .                                      | 73     | 15 | 0  |
| Under 100 <i>l.</i> . . . . .                                     | 19     | 10 | 0  |
| Above that sum . . . . .                                          | 80     | 0  | 0  |
| Certificates . . . . .                                            | 7      | 10 | 0  |
| Office copies of præcipes or other proceedings . . . . .          | 357    | 16 | 6  |
| Searches, if not more than two terms . . . . .                    | 403    | 16 | 0  |
| Searches, exceeding two and not more than four terms . . . . .    | 11     | 8  | 0  |
| Searches, exceeding four terms, or a general search . . . . .     | 13     | 5  | 0  |
| Affidavits, affirmations, &c., taken before the Master . . . . .  | 164    | 15 | 0  |
| Filing recognisances, or security in ejectment or error . . . . . | 2      | 12 | 6  |

|                                                | £       | s. | d. |
|------------------------------------------------|---------|----|----|
| Allowances and justification of bail . . . . . | 0       | 15 | 0  |
|                                                | £20,305 | 14 | 6  |
| Fees received under the former table . . . . . | 1,507   | 19 | 2  |
| Total . . . . .                                | £21,813 | 13 | 8  |

*Disbursements.*

|                                                                                                                       | £     | s. | d. |
|-----------------------------------------------------------------------------------------------------------------------|-------|----|----|
| Five Masters . . . . .                                                                                                | 5,934 | 19 | 7  |
| Nineteen Clerks . . . . .                                                                                             | 4,632 | 9  | 1  |
| One messenger to the Masters . .                                                                                      | 130   | 0  | 0  |
| Extra usher to the Court . . . .                                                                                      | 100   | 0  | 0  |
| Messenger to the Court . . . . .                                                                                      | 80    | 0  | 0  |
| Tipstaff to the Court, in addition to fees received to make up his annual income to 300 <i>l.</i> . . . .             | 229   | 10 | 0  |
| Rent . . . . .                                                                                                        | 690   | 0  | 0  |
| Taxes . . . . .                                                                                                       | 72    | 11 | 4  |
| Housekeeper and laundress . . . .                                                                                     | 75    | 16 | 1  |
| Books for the library of the Court and the library of the Masters' office, stationery and tradesmen's bills . . . . . | 432   | 1  | 7  |

*Pensions and Compensations.*

|                                                                   |         |    |    |
|-------------------------------------------------------------------|---------|----|----|
| Retiring allowance to one of the Masters and compensation . . . . | 1,600   | 0  | 0  |
| Hereditary chief usher . . . . .                                  | 45      | 10 | 10 |
| Housekeeper . . . . .                                             | 23      | 16 | 0  |
| Sealer of writs and process, abolished, March 31, 1849 . . . . .  | 324     | 0  | 0  |
|                                                                   | £14,370 | 14 | 6  |

(Signed)

W. H. WALTON.  
W. F. POLLOCK.  
R. E. JOHNSON.  
JOHN C. TEMPLER.

## OBJECTIONS TO THE REGISTRATION OF DEEDS.

SIR,—The *Legal Observer* has of late bestowed much of its space to the subject of the registration of deeds. The great object in view by the parties introducing and espousing this new system should, as it seems to me, embrace three main points:—safety, economy, and expedition in the transfer of property. As to the first,—saving from the loss of deeds by fire or other accident,—it does not occur to me, with deference to the opinions of the gentlemen who have given evidence on the subject, that we shall have one jot more of safety than we at present possess. In cases of fire or accident, certainly secondary evidence might be desirable to have available, but nothing more.

As to the second point, it has always occurred to me that the system of registration must increase the expenditure, rather than the reverse. In an ordinary purchase of property in a non-registering county, when the attorney

hands over the deeds to the purchaser there ends the transaction; but if his purchase deed must be registered, something must, I assume, be paid for the registration, and this is an *additional* expense forced on the purchaser, for out of the fees payable by him all the expenses of buildings, books, registrars, clerks, and a host of *et ceteras* must arise. The country at large cannot be expected to contribute toward the sustaining of such establishments as register offices.

Then look at the working of existing register offices. They are defective in many essentials. The old Acts of Parliament having been little attended to, and almost anything could a few years ago have been registered. I have seen a deed conveying land in Surrey registered in the Middlesex office. But within the last few years they have certainly been more careful and particular, but these cares and particularities are not unfrequently attended with expense. I would that some of the gentlemen who espouse this course, and even a Judge who extols the principles of registration, had two or three London titles to investigate. I will take an estate of one of your large landed London proprietors,—Portman, Portland, Grosvenor, Camden, &c. One of them grants a lease, say in Marylebone, to one of the euphonic names of Smith or Brown (they are both bad letters to search in), and they build 100 houses or streets; they then sell or let and make the most of their bargain. Some 30 or 40 years afterwards, a person buys one of these houses, and search must be made through the registry, and I find Brown or Smith to *A. B.*, Marylebone; Brown or Smith to *C. D.*, Marylebone, and so on till they have disposed of every house. I must take a note of every transaction by those builders, and then refer to every book containing the registry of the deeds for the purpose of ascertaining whether any of the other transactions affect the house I am buying. This process frequently occupies several days. Begin then at 10 o'clock, and cease at 4,—six hours at 6s. 8d. an hour,—2l. per diem for searching through matter ultra or extra of my purchase. Then frequently inquiries arise out of the searches,—letters, attendances, perusals, &c., which end probably in nothing, and but for the registry would have been known nothing of. Surely these are all additions to ordinary non-registering counties, and after all there is a winding-up of some two or three guineas for registering the conveyance or assignment.

The foregoing will, I think, pretty clearly evidence that registration is antagonistic to the third point—*expedition*. Would it not be more advantageous to the community at large to repeal the Registration Acts and un-register York and Middlesex, rather than fetter such an additional burthen on the remaining counties?

A LAWYER'S SCRIB.

## ENFRANCHISEMENT OF COPYHOLDS.

WE subjoin a copy of a letter from a barrister of long standing, a member of Lincoln's Inn, addressed to one of the petitioners to the House of Commons, for the Enfranchisement of the Copyholds in the Manor of Kennington, presented to the House of Commons on the 26th ultimo.

"I have perused your petition to the House of Commons on the subject of entire enfranchisement of copyhold tenure, and must say, that I fully concur in its object.

"The motives as set out by you are most judicious, well-grounded, and pertinent, and it is with much reason that the Committee of 1838 asserted the fact, that copyhold tenure was ill adapted to the wants of the present day and a blot on the judicial system of England.

"Indeed, ever since I have been acquainted with such monstrous things as copyhold, gavelkind, and borough English tenures, it has been my opinion that they are not only a blot but a disgrace to the age we live in, and foreigners would not, I feel convinced, believe that such anomalies are to be met with in civilised England in the middle of the 19th century—more worthy, indeed, of the Autocrat the Emperor of all the Russias and his loyal subjects, than the people of old England. It is high time, indeed, that they be abolished, and but one kind of tenure acknowledged by the law of the land, namely—freehold. Until we do so, it will be idle for us to boast of our civilisation, and to pretend to set an example to the rest of the world.

"America is there, and France is there likewise to give the lie, where such subsidies would no longer be tolerated.

"Saying so much is saying at the same time how much I wish you success in your endeavours to get rid of this barbarous relic of times gone by, when men were clad with steel, with minds equally fettered, but who, in the present day, impelled by steam and electric wire, are no longer the passive creatures of yesterday, but ever rushing forward like the carriage on the rail with new and fresh energies, to the tune of 'Go ahead boys! go.'"

## TRANSFER OF CAUSES IN CHANCERY.

IN all cases of transfer of causes, it is the practice of the Lords Justices of Appeal to require (in addition to any other consent which it may be necessary to obtain) the assent of the Judge *from* whose paper, and of the Judge to whose paper the transfer of the cause is proposed to be made, and without the assent of such Judges no such transfer will be ordered.



## THE RECORDER OF HULL.

## REMISSION OF PUNISHMENT ON JUVENILE OFFENDER.

THE *Hull Advertiser* (a liberal paper) of the 15th instant, observes, that "The boy Hogan, whose case gave the noble Secretary of State so much trouble a few months ago, was again tried before the learned Recorder of this borough, on Monday last (the 10th July), and having for the fourth time been found guilty of felony, was mercifully sentenced to four years' penal servitude. We do not believe that the Recorder ever appeared to more advantage upon the Bench than while trying and passing sentence upon this incorrigible lad. He spoke of the conduct of those who had addressed the Secretary of State as influenced by the promptings of a generous humanity; and he pointed out to the boy the ingratitude of which he was guilty in rendering himself unworthy of an interference so kind, and as regarded the Crown so successful. But it was the Recorder's account of what he himself had privately done to reclaim the lad, which told with such touching effect upon the audience. The Recorder had himself been the first to extend mercy to the lad, and to put him in the way of reforming, if moral reformation in Hull had been possible. He now felt it to be his duty wisely to remove him from the scene of so much temptation; and he discharged that duty with a dignity, a decorum, and in a spirit of kindness towards those who addressed the Secretary of State on that occasion, which will be long remembered to his credit."

## SELECTIONS FROM CORRESPONDENCE.

## COPYHOLDS.—NON-APPEARANCE OF HEIR.

THE tenant by copy of Court Roll dies; the usual presentment of death is made at the Court, and three proclamations for the customary heir, &c., to come in and be admitted;—but no one claiming admission—can the lord in such case, or his steward, issue a warrant to the bailiff to seize or must the lord bring ejectment? R.

## STAMP DUTIES BILL.—COUNTERPARTS.

By the 16 & 17 Vict. c. 63, an *ad valorem* duty was imposed on conveyances, in consideration of a yearly *rent charge*, &c., but the Act does not provide for the stamps on the duplicates of such conveyances. Can any of your readers inform me whether anything is being done this session to remedy such omission?

J. S.

[The Bill now before the House appears to supply this defect.—ED.]

## COUNTY PALATINE CHANCERY BILL.

THE clauses in this Bill giving jurisdiction to the Lords Justices to hear *Appeals*, are doubtless beneficial; but the power of compelling the appearance in this local Court of persons residing in London or Cornwall, or elsewhere, is very objectionable. Why should the County of Lancaster possess a Court of Equity, whilst Yorkshire and all other counties are denied a similar privilege? Why should executors, trustees, legatees, creditors, infants, and others, be required to appear in person or by unknown agents at Preston, or elsewhere, when the business can be more conveniently, expeditiously, and cheaply transacted in London? Even in the County Palatine itself, the suitors and their solicitors can in general more readily communicate with their London agents (to whom they are writing daily) than to their Preston correspondents.

The advantages proposed by the Bill are confined to the officers of the Palatine Court and the practitioners residing at Preston, at the expense and inconvenience of all the suitors, witnesses, and solicitors who do not belong to that locality. We conceive, that at Liverpool and Manchester, it would be preferable to conduct the business in London, where the leading solicitors of Lancashire, as well as their clients, have so frequently occasion to resort.

## NOTES OF THE WEEK.

## NEW QUEEN'S COUNSEL.

Peter Erle, Esq., and Edmund Beckett Denison, Esq., of the Chancery Bar, and Thomas Phinn, Esq., and Robert Porrett Collier, Esq., of the Common Law Bar, have been sworn in before the Lord Chancellor as Queen's Counsel; the two last-mentioned gentlemen with patents of precedence.

Mr. Erle was called to the Bar by the Honourable Society of the Middle Temple on June 1, 1821, and received his appointment as Chief Commissioner under the Charitable Trusts' Act, in October, 1853.

Mr. Denison is M.P. for the Yorkshire West Riding, and was called to the Bar at Lincoln's Inn, November 22, 1841.

Mr. Phinn was called to the Bar at the Inner Temple, November 20, 1840, was appointed Recorder of Portsmouth in July, 1848, and transferred to Devonport in December, 1851.

He was first returned for Bath in July, 1852, and is still the M.P. for that city.

Mr. Collier was called to the Bar at the Inner Temple, January 27, 1843, and is Recorder of Penzance. He has represented Plymouth since July, 1852.

#### COLONIAL LAW APPOINTMENT.

George Smout Fagan, Esq., Barrister-at-Law, has been appointed senior magistrate at Calcutta.

#### NEGLECT IN DELIVERING COURT PAPERS.

The Vice-Chancellor Stuart intimated that much inconvenience and loss of time resulted from the neglect of solicitors to deliver the

papers for the use of the Court to the proper officer, and he felt it his duty for the future to act on the Order of the 3rd April, 1828, which empowered the Court to make the solicitors neglecting to deliver the papers pay personally the costs occasioned by such neglect.

#### APPOINTMENT OF LECTURERS AT THE INCORPORATED LAW SOCIETY.

Mr. Archer Shee has been appointed Lecturer for the ensuing year, on Equity and Bankruptcy; and Mr. Charles Pollock on Common Law and Criminal Law.

The Lectures will probably commence on Friday, the 3rd November.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

#### Lord Chancellor.

*Esparte Pope*, July 15, 1854.

#### CORONER.—WHERE ELECTION VOID.—TAKING RETURN OFF FILE.

*On the election of a coroner certain votes were declared insufficient for want of qualification by the Court of Queen's Bench, and a new writ issued for the election of a coroner: An order was made on motion to take the return of the coroner who had been elected by reason of such votes off the file, with liberty to the sheriff to make a fresh return, but a declaration that the other competing candidate was coroner without a fresh election was refused.*

It appeared that on the election taking place to the office of coroner for the district of Hemel Hempstead, Herefordshire, Mr. Pope was in a minority in consequence of the votes polled on behalf of the other candidate, Mr. Frederick Day, of about 70 persons, who claimed to vote in respect of their right of pasturage over certain waste land at Boxmoor, which had been held insufficient by the Court of Queen's Bench (reported *ante*, p. 110), and that the undersheriff had refused the scrutiny demanded. A new writ for the election of a coroner having issued,

Tripp now applied for a declaration that Mr. Pope was coroner without a fresh election.

The Lord Chancellor ordered the return of Mr. Day, as coroner, to be taken off the file, with liberty to the sheriff to make a fresh return, the writ in the meantime to be suspended, but said that the declaration asked could not be made.

#### Lords Justices.

*Judge v. Baker*. July 14, 1854.

#### TRANSFER OF CAUSE.—ASSENT OF JUDGE.—PRACTICE.

*Held, that upon an application for leave to*

*transfer a case from the paper of one Judge to another, it is necessary to obtain the assent of both the Judges.*

THIS was an application, by consent of all parties, for leave to transfer this case from the paper of the Master of the Rolls to the paper of Vice-Chancellor Kindersley.

C. M. Roupell in support.

The Lords Justices said, that leave would be given upon the assent of both Judges to the transfer being obtained.

#### Master of the Rolls.

*Underwood v. Wing*. July 18, 1854.

#### GIFT OVER TO SURVIVOR.—EVIDENCE OF SURVIVORSHIP.

*The testator and his wife were swept off the deck of a vessel at the same time, and were not seen to rise afterwards, but their daughter was a short time after seen by a sailor, who gave evidence thereof in a suit by her representative: Held, that the death of the testator and his wife must be presumed to be simultaneous, and that the plaintiff was entitled as against the defendant, to whom there was, under the wife's will, a gift over, in the event of the testator surviving herself, and who, under the testator's will, took upon the death of both and of their children.*

THE testator, Mr. Underwood, by his will, dated in October, 1853, gave all his property to his wife for life, in case she survived him, and afterwards to their children, with a gift over to the defendant (whom he appointed his executor) absolutely, upon her previous death, and none of the children attaining 21, or if a daughter marrying. Mrs. Underwood had also, on the same day made a will, under a power, whereby she appointed to her husband, if he survived her, with a gift over to the defendant, in case her husband died before her. It appeared that they embarked in the Dal-

house for the purpose of proceeding to Australia, and that they were drowned when it was wrecked off Beechy Head. One of the sailors gave evidence that when the ship was struck the testator and his wife, together with two of his children, were standing together and were all swept into the sea, and were not afterwards seen to rise to the surface, and that their other daughter, Catherine, was a short time after seen by him struggling in the water, and was lashed by himself and another seaman to a spar. The plaintiff, as personal representative of this daughter, who also perished, claimed the property as against the defendant.

R. Palmer and Prendergast for the plaintiff; Roupell and Baggallay for the defendant.

The Master of the Rolls said, that the death of the testator and his wife must be presumed to have been simultaneous, and that the gift over to the defendant, upon survivorship, did not take effect, and the property, therefore, went to the plaintiff as next of kin and personal representative of the daughter.

### Vice-Chancellor Kindersley.

Stobart v. Todd. July 13, 1854.

SPECIAL EXAMINER UNDER EQUITY JURISDICTION AMENDMENT ACT.—DEPOSITIONS.—PRACTICE.

Held, that a special examiner, under the 15 & 16 Vict. c. 86, s. 32, is bound to take down the depositions in his own handwriting, and that it is insufficient when in that of his clerk, although signed by the witnesses and the examiner, but where the parties had acquiesced in what had taken place, the depositions were, under the circumstances, ordered to be filed.

THIS was an application for a direction to the Clerk of Records and Writs to file certain depositions taken before a special examiner, under the 15 & 16 Vict. c. 86, s. 32,<sup>1</sup> although not in the hand-writing of the examiner but of his clerk. It appeared that they were signed by the witnesses and also by the examiner.

J. Hinde Palmer and Bagshawe, jun., for the respective parties.

The Vice-Chancellor (after consulting the

<sup>1</sup> Which enacts, that "the depositions taken down upon any such oral examination as aforesaid shall be taken down in writing by the examiner, not ordinarily by question and answer, but in the form of a narrative, and when completed shall be read over to the witness, and signed by him in the presence of the parties, or such of them as may think fit to attend: provided always, that in case the witness shall refuse to sign the said depositions, then the examiner shall sign the same," &c.; and by s. 34, "When the examination of witnesses before any examiner shall have been concluded, the original depositions, authenticated by the signature of such examiner, shall be transmitted by him to the Record Office of the said Court to be there filed."

other Judges) said, that examiners were bound to take down the depositions in their own handwriting, but that in the present case, as the parties had acquiesced in what had been done, the depositions would be filed.

In re Rose's Settlement. July 14, 1854.

WILL.—CONSTRUCTION.—DIVIDENDS ACCRUING DUE WITHIN YEAR.

The testator, by his will, in pursuance of a power of appointment under his wife's will, appointed a sum of 2,000*l.* among his nephews and niece equally, the share of such as should at his death have attained 21 to be paid within 12 months next after the same should happen without the interest and dividends due thereon, and the share of such as should not have then attained 21 to be paid on attaining that age or marriage, provided neither happened within 12 months next after his death; and in that case within 12 months next thereafter: Held, that the dividends accruing due during the 12 months after the testator's death on the shares of the adult children went to the residuary legatee.

THE testator, by his will, dated in July, 1851, in pursuance of a power of appointment under his wife's will, gave 2,000*l.*, equally, unto and among his nephews and niece nominatim, share and share alike, and directed that the share or shares of such one or more of them as should at the time of his decease have attained the age of 21 years should be paid or transferred to him or her within 12 months next after the same should happen, without the interest or dividends due thereon, and the share or shares of such one or more of them as should not have then attained that age should be paid to them on their attaining that age, and the share of his niece on her attaining that age or marriage, provided neither of those events happened within 12 months next thereafter. Then followed a clause of survivorship, and a gift of the residue to Mr. Gray, his executor. The fund was paid into Court under the 10 & 11 Vict. c. 96, and this petition was presented on the question whether the dividends accruing due within 12 months after the testator's death fell into the residue or not.

Tripp for the legatees; Wickens for the residuary legatee; Elderton and Giffard for other parties.

The Vice-Chancellor said, the testator's intention was, that the dividends should not go to them, but to the residuary legatee, and that if any of them attained 21 within the 12 months, the transfer would not be made until 12 months after the testator's death.

Stock v. Whitmore. July 17, 1854.

ADMINISTRATION SUIT, COSTS OF.—TESTAMENTARY EXPENSES.—CONVERTING REAL ESTATE.

Held, that the costs of an administration suit

are not included in "testamentary expenses," to which the whole of the testator's property, consisting of personal, mixed, and real estate was made liable, and that they were payable by the several parties benefited by the estate being administered.

Held, also, that the costs of converting real estate fall exclusively on such real estate.

THE testator, by his will, gave the residue of his property, which consisted of personal, mixed, and real estate, after payment of his debts, funeral and testamentary expenses, and legacies, as therein directed, and he subjected the whole of his property to the payment of specific debts and legacies. It appeared that a suit had been instituted to administer the estate, and the matter now came on upon the question, whether the costs were testamentary expenses and payable out of the residue.

*Toad, Baily, Glasse, Tension Edwards, Greene, and Jones*, for the several parties.

THE Vice-Chancellor said, that the costs of the suit were not included in the testamentary expenses, and were to be borne by the several parties benefited by the estate being administered. The expenses, however, of converting the real estate must fall exclusively on the real estate.

#### Vice-Chancellor Stuart.

*Bowden v. Henderson.* July 17, 1854.

LEGATES.—PRESUMPTION OF DEATH.—EVIDENCE.

Where a person entitled to a share in a legacy had not been heard of since Feb. 1835, when she was living in France, although inquiries had been made and an advertisement inserted in *La Presse*, but it appeared that she had quarrelled with her friends and had become a Roman Catholic, and it was unlikely she should again communicate with her friends or relatives: Held, that the rule of law presuming her death was inapplicable under the circumstances, and further inquiries were directed.

THE testatrix, by her will, dated in May, 1834, gave a sum of 1,700*l.* stock in trust for the five children of Mr. Joseph Langton, in equal shares, and appointed her sister Sarah Walker, of whom the plaintiff in this suit was the legal personal representative, her residuary legatee. It appeared that one of the children, Letitia, had parted from her family and left England for France about the year 1838, and had, after residing for a short while at Calais, gone to Paris as a governess. She had written in February, 1835, to a relative in this country, stating she had become a Roman Catholic, and was going to take another situation as governess and housekeeper to a Mons. Bonboutier; but, although inquiries had been made after her, and an advertisement inserted in *La Presse*, she could not be heard of, and the plaintiff accordingly claimed the share in the fund to which she was entitled.

*Elmley and W. D. Lewis*, for the plaintiff,

in support; *Bacon and Shebbeare* for the next of kin; *Goodere* for the executor of the will.

THE Vice-Chancellor said, that the rule of law which presumes the death of a person who had not been heard of for seven or more years was subject to exception, where, as in the present case, it was unlikely the party missing would have had communication with her friends or relatives. It appeared she had quarrelled with her family and become a Roman Catholic, and there must therefore be further inquiries directed.

*Waters v. Waters.* July 18, 1854.

SUIT BY DEVISEE AND SOLE EXECUTOR AGAINST HEIR-AT-LAW.—ISSUE AS TO TESTATOR'S SANITY.—COSTS.

An issue had been directed in an administration suit by the devisee and sole acting executor of a testator against the heir-at-law and parties beneficially interested to a Court of Law, at the instance of the heir, as to the sanity of the testator, but the will was established, and an application for a new trial had been refused with costs: Held, that as the heir-at-law had not raised the question of sanity improperly or dishonestly, he was entitled to his ordinary costs of suit, including those at law.

IN this administration suit by the devisee and sole acting executor of a testator against the heir-at-law and parties beneficially interested, an issue had been directed to a Court of Law, at the instance of the heir, as to the sanity of the testator. The will was, however, established, and an application for a new trial had been refused, with costs (reported 2 De G. & S. 591). The question now came on upon further directions and costs.

*Hallett*, for the plaintiff, cited *Berney v. Eyre*, 3 Atk. 387, and contended the heir was not entitled to the costs of the issue.

*Osborne and B. L. Chapman* for other parties.

THE Vice-Chancellor said, that as the heir-at-law had not raised the issue of the testator's sanity improperly or dishonestly, he was entitled to the ordinary costs of suit as between party and party, including the costs at law.

#### Vice-Chancellor Wood.

*De Windt v. De Windt.* July 15, 1854.

CHARITABLE BEQUEST TO CHAPEL.—PAYMENT TO TRUSTEES.

A sum of money was given by a testator to a chapel: Held, on further directions, that it must be paid to the trustees for the purpose of repairing the same, and not to the minister.

THE testator, Major Bray, by his will, gave a sum of 500*l.* to Miss Galigni's Roman Catholic Chapel, at St. John's Wood, and the question now arose on further directions, as to whom the amount was to be paid.

*Willcock and Prendergast* for the plaintiff;

*Rolt, Radall and Hosper*, for other parties; *Wickens* for the Attorney-General.

The Vice-Chancellor said, that in accordance with the decision of *Attorney-General v. Roper*, 2 P. Wms. 125, the money must be paid to the trustees of the chapel and not to the minister, for the purposes of repairing the same.

*Martin v. Wellstead.* July 17, 1854.

**CHARITABLE BEQUEST.—VALIDITY OF.—MORTMAIN ACT.**

*Gift of a sum of money to trustees in trust to invest in the public funds or on real security, and to pay the dividends or interest in such manner as they should think fit amongst poor persons of a town, and after the death of the survivor of the trustees, then to the corporation of the town as trustees, to be applied in a like manner, and with power to the trustees to apply the capital and interest for or towards establishing or promoting any almshouses or other permanent establishment for the relief or assistance of the poor of the town, and the testator desired that they should commence building such almshouses as soon as they conveniently could after his decease: Held, that the trust was within the operation of the Mortmain Act, and was therefore void.*

THE testator by his will gave a sum of 400*l.* to trustees, in trust to invest the same in the public funds or real security, and to pay the dividends and interest thereon in such manner as they might think fit amongst poor persons of Rye deserving of the same, and after the death of the survivor of such trustees he gave the said sum and the securities on which it might be invested to the Mayor, &c., of the town (whom he appointed trustees) to apply the dividends and interest thereon in the like manner. The will also contained a power to the trustees to apply as well the capital as the interest of the legacy for or towards establishing or promoting any almshouses or such permanent establishment for the relief or assistance of the decayed or other poor persons of the town as the trustees might think advisable to establish or promote, and he desired them to commence building such almshouses as soon as they conveniently could after his decease. This bill was filed by the infant residuary legatees claiming the legacy as void under the Mortmain Act.

*Rolt and Dart* for the plaintiff; *Pitman* for the executors; *W. D. Lewis* for the Mayor, &c., of Rye; *Wickens* for the Attorney-General.

The Vice-Chancellor said, that the true construction of the will was that the trustees were to invest the fund until they could find a suitable plot of ground on which to build almshouses, when they were to build the same, and the trust was therefore within the operation of the Statute and was void.

*Thistle v. Vaughan.* July 17, 1854.

**GENERAL DEVISE OF REAL ESTATE.—LAND CONTRACTED TO BE SOLD BY TESTATOR.**

*A testator devised all his real estates to his three children, as tenants in common, with a gift over to other parties, in case any of them died under 21 without issue: Held, that an estate which the testator had contracted during his lifetime to sell to the defendant was not included in the devise but descended to the heir-at-law.*

THIS was a claim on behalf of the executors of a deceased vendor, for the specific performance of a contract for the sale of certain land to the defendant, who had accepted the title. It appeared that the vendor had, by his will, devised all his real estate to his three children, as tenants in common, with a gift over, in case any of them should die under 21 without leaving issue, of the respective estates, interests, and shares to which such child or children so dying would otherwise have been entitled, and of any accruing share or interest therein, to certain parties therein named as tenants in common. It appeared that there were two children, both infants, one of whom was heir-at-law, and this claim was necessary on the question, whether the trust property passed to the devisees under the will, or descended to the heir-at-law.

*Murray* for the plaintiffs; *Pearson and Babington* for other parties.

The Vice-Chancellor said, that the words of the will referred to the beneficial and not to the trust estates, which, therefore, descended to the heir, and in whom the legal estate vested.

*Griffiths v. Hatchard.* July 18, 1854.

**CONDITION OF SALE AS TO TITLE-DEEDS.—PURCHASER OF LARGEST LOT.**

*One of the conditions of sale on putting up an estate to auction in lots was, that the title-deeds should be given up to the purchaser of the largest lot: Held, that it referred only to the lots consisting of land and not to the ground-rents, and that the plaintiff, as the purchaser of the largest lot in acreage, was entitled to have the deeds.*

It appeared, from this special case for the opinion of the Court, that upon an estate in the Isle of Wight being put up for sale by auction, in lots, the 8th condition provided, that the purchaser of the largest lot should have the custody of the title-deeds, entering into the usual covenant for their production to the other purchasers.

*Mason* for the plaintiff; *Pearson* for the defendant.

The Vice-Chancellor said, that the condition did not apply to the ground-rents, of which some of the lots consisted, and that the plaintiff, who was the purchaser of the lot largest in acreage, was entitled to the deeds.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

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SATURDAY, JULY 29, 1854.
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### LOCAL COURTS OF EQUITY.

#### COUNTY PALATINE OF LANCASTER.

IN ancient times local Courts, both of Law and Equity, were not only desirable, but absolutely necessary. When a fortnight at least was occupied in travelling from the northern counties to the metropolis, and when the danger was so great that men made their wills before starting on their journey, it was essential that County Courts should be established, and we need not marvel that the important counties palatine of Lancaster and Durham, as well as Chester, and the principality of Wales, should possess extensive jurisdictions, and that all the litigation of those early times, of whatever nature or amount, came within the province of the local tribunals.

It is remarkable that, amongst the first of our modern law reforms, the Great Sessions of Wales and the extensive local jurisdictions of the principality were abolished, the business was transferred to the Superior Courts, and the practitioners were admitted on a separate Roll at Westminster Hall. The special jurisdiction of the Courts of the county of Chester followed the same fate. And although the Courts of the County Palatine of Durham remain *in statu quo*, their occupation has diminished to a comparatively small amount.

It is not surprising that the county of Lancaster should form an exception to the decay of these ancient tribunals. Liverpool and Manchester alone are sufficient to form a populous county of themselves; but it does not appear from the history of the Court that, even in that important district, administration suits and other equity business can be successfully conducted. If we are not misinformed, it was a few years ago

contemplated by the Government, at the time a former Vice-Chancellor of the County Palatine was appointed, to abolish the Equity Court altogether, and the learned gentleman, we understand, accepted the office on the understanding that if it were abolished he would have no claim to compensation. We are not aware whether the present able Judge was appointed on a similar understanding; but we believe there is no doubt that the abolition of the Equity Court was not long ago under the consideration of the authorities.

It does not tell favourably for the Court, that notwithstanding the numerous alterations effected by that eminent Judge Sir William Page Wood, when he was Vice-Chancellor, under the Act of 13 & 14 Vict. c. 43 (1850), the Legislature is again called upon to make further amendments in order to increase the business of the Court. The clauses of the Bill by which it is proposed to substitute the Lords Justices in Chancery for the Common Law Judges of Assize in cases of *appeal*, are manifestly an improvement, and the powers also given to the Court of Appeal to order the transfer of causes from the Local to the Superior Court are also beneficial; but the question still remains to be decided, whether in the improved state of the Court of Chancery, it will not be preferable to transfer the whole to the metropolitan Court.

We understand that the attention of the Council of the Incorporated Law Society has recently been called to the probable operation of the Bill if passed into a law; and they have promptly taken the subject into their consideration and prepared a statement from which we extract the following objections to the measure, and which seem to demand the serious attention of the Law Officers of the Crown

before the Bill be allowed further to proceed:—

"The Chancery Court of Lancashire was originally intended to be a purely local Court, confined to local property and objects, in matters of litigation between persons resident in the county;—the Judge and his officers being resident there, at a time when communications with the High Court of Chancery were difficult, inconvenient, and expensive; and for these purposes the existing law appears to be more than sufficient.

"Under the proposed Bill, the business of the Court may be carried on, without the Judge, or the Bar, ever appearing in the Palatine, or even any of its suitors having been there (other than casually, in order to confer nominal jurisdiction), and to enable this local Court for Lancashire to have all its hearings, primary, interlocutory, and appellate in Lincoln's Inn.

"The greatest part of the work of a Court of Equity is administrative; more than half of the business of the High Court of Chancery is of that character. But administration can only be of the *entire* of the property subject to a trust. If a man die possessed of a single share in a public company, or other property of limited amount in the county, and all the rest of his estate elsewhere, it would be extravagant to allow any one to compel all the other creditors and legatees to resort to Lancashire, and employ Lancashire advisers and counsel for all the matters relating to the trust: still more to make all infants interested under the estate (though neither they nor their parents were ever in the county in their lives), wards of the Court there, and all subject to be educated and managed under the control of its Vice-Chancellor.

"Formerly, when it was attempted to render this Court really efficient, it was found that though nominally a Lancashire Court, it must be allowed to sit in Lincoln's Inn, and possesses jurisdiction over persons out of the County Palatine. Accordingly, by the 13 & 14 Vict. c. 43, s. 13, power is given to the Vice-Chancellor of the County Palatine to hear cases out of the limits of the jurisdiction;—by s. 14, to direct process to be served out of the jurisdiction, *where the party has submitted to the jurisdiction*. And by s. 15, where a decree or order cannot be enforced by reason of the party being out of the jurisdiction, it shall be enforced by making it an order of the High Court of Chancery.

"These powers, already sufficiently comprehensive, are now proposed to be farther extended.

"The present Bill will have the effect of giving jurisdiction to the local Court concurrently with the Court of Chancery in all cases in which there is any equitable question relating to property in the County Palatine, and on all claims and demands by persons residing in the County Palatine against any party wherever resident. Thus executors, trustees, agents,

and debtors of every class, resident in London or in places the most distant from Lancashire, will be liable to proceedings against them at the suit of creditors, legatees, and claimants of all kinds; and they must appear in person or by their counsel and solicitors wherever the local Court may sit or its officers discharge their functions.

"Whilst the Court is empowered by the Bill to hold its sittings in London, the official business must be conducted in Lancashire. From thence all proceedings will be issued for service on the defendants, whether in the county or elsewhere; and there the suits will be conducted, and accounts taken before the officers of the Court. Thus all parties residing at a distance will be put to great expense, inconvenience, and loss of time.

"By the 10th section persons resident anywhere in England may be brought within the jurisdiction of the Lancaster Court; and even when out of the jurisdiction, they can be reached by an order from the Court of Appeal, which order is to be granted on the plaintiff's application *ex parte*, without notice to or hearing the defendant; and he is to be compelled to go to Lancashire to defend himself, except that, at the peril of costs, he may move to discharge the order *after* it is made.

"By the 15th section, *future* Statutes applicable to the High Court are to extend to the local Court. This is very objectionable, and will lead to confusion, for the subsequent Acts may not be intended to apply to the County Palatine; and where such is the intention, it should be expressly declared: otherwise new and extraordinary powers may be conferred on the local Court, which the Legislature never contemplated.

"The extensive changes in the practice of the Courts of Equity of late years have enabled any person, with however uncertain a claim, to commence a suit, and afterwards to add all persons who may appear to have any interest in the subject matter. It is proposed now to endow the County Palatine Court with this power, so that, if the most meagre footing for a suit can once be established within its jurisdiction, it may draw to itself the fullest authority over persons and property in every part of the empire. The only reason in favour of a local Court of Equity was the advantage in certain cases of having accounts and inquiries taken where the parties and witnesses reside; but this advantage is now attainable by the powers given to the High Court of Chancery of employing local accountants in cases requiring them."

In considering whether it may possibly be expedient to continue an Equity Court in Lancashire for the sake of the great towns of Manchester and Liverpool, we may advert to the Equity jurisdiction possessed by "the Lord Mayor's Court" in the city of London. It would very much sur-

prise the bankers, merchants, and traders of London, if the solicitor of any of them were to advise the adoption of proceedings in the City Court, instead of the High Court of Chancery. True it is, that the Lord Chancellor, the Lords Justices, the Master of the Rolls, and the Vice-Chancellors are close at hand, and are preferred to the Recorder of London (however esteemed as a criminal Judge). But then in Lancashire there is no Judge to administer justice at men's own doors, nor any Equity Bar.<sup>1</sup> The suitors must come to London to follow the Judge,—a sufficient proof that there is so little Court business to transact that no equity man of any eminence can be found to devote himself to the local duties of the office. "The mountain *must* come to Mahomet. He will not go to it." Surely the rational course would be to transfer the *official* business to London, as the judicial is already there, and compensate the local officers for any loss they may sustain.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

17TH VICTORIA, 1854.

THE Acts of the present Session printed in the present Volume, with an Analysis to each, will be found at the following pages:—

Income Tax, cc. 17, 24, pp. 46, 134, *ante*.

Commons' Inclosure, c. 9, p. 64.

County Court Extension, c. 16, 121.

Registration of Bills of Sale, c. 36, p. 216.

Warwick Assizes, c. 35, p. 218.

### ATTENDANCE OF WITNESSES.

17 & 18 VICT. c. 34.

Courts of Law in England, Ireland, and Scotland may issue process to compel the attendance of witnesses, although not within their jurisdiction; s. 1.

Statement to be made at the foot of writ that it is issued by special order; s. 2.

Witnesses making default to be punished by the Courts of the country in which the process was served; s. 3.

Persons not to be punished if they shall appear that sufficient money has not been tendered to pay expenses; s. 4.

Act not to prevent the issuing of a Commission to examine witnesses; s. 5.

<sup>1</sup> In the City of London Court the suitors have now the advantage of the whole Metropolitan Bar; yet rarely is any equity business heard of.

Not to affect the admissibility of evidence where now receivable.

The following are the Title and Sections of the Act:—

An Act to enable the Courts of Law in England, Ireland, and Scotland to issue Process to compel the Attendance of Witnesses out of their Jurisdiction, and to give effect to the Service of such Process in any Part of the United Kingdom. [10th July, 1854.]

Whereas great inconvenience arises in the administration of justice from the want of a power in the Superior Courts of Law to compel the attendance of witnesses resident in one part of the United Kingdom at a trial in another part, and the examination of such witnesses by commission is not in all cases a sufficient remedy for such inconvenience: be it therefore enacted, as follows:—

1. If, in any action or suit now or at any time hereafter depending in any of her Majesty's Superior Courts of Common Law at Westminster or Dublin, or the Court of Session or Exchequer in Scotland, it shall appear to the Court in which such action is pending, or, if such Court is not sitting, to any Judge of any of the said Courts respectively, that it is proper to compel the personal attendance at any trial of any witness who may not be within the jurisdiction of the Court in which such action is pending, it shall be lawful for such Court or Judge, if in his or their discretion it shall so seem fit, to order that a writ called a writ of subpoena ad testificandum or of subpoena duces tecum or warrant of citation shall issue in special form, commanding such witness to attend such trial wherever he shall be within the United Kingdom, and the service of any such writ or process in any part of the United Kingdom shall be as valid and effectual to all intents and purposes as if same had been served within the jurisdiction of the Court from which it issues.

2. Every such writ shall have at foot thereof a statement or notice that the same is issued by the special order of the Court or Judge, as the case may be; and no such writ shall issue without such special order.

3. In case any person so served shall not appear according to the exigency of such writ or process, it shall be lawful for the Court out of which the same issued, upon proof made of the service thereof, and of such default, to the satisfaction of the said Court, to transmit a certificate of such default under the seal of the same Court, or under the hand of one of the Judges or justices of the same, to any of her Majesty's Superior Courts of Common Law at Westminster, in case such service was had in England, or in case such service was had in Scotland to the Court of Session or Exchequer at Edinburgh, or in case such service was had in Ireland to any of her Majesty's Superior Courts of Common Law at Dublin; and the Court to which such certificate is so sent shall and may thereupon proceed against and punish



the person so having made default in like manner as they might have done if such person had neglected or refused to appear in obedience to a writ of subpoena or other process issued out of such last-mentioned Court.

4. None of the said Courts shall in any case proceed against or punish any person for having made default by not appearing to give evidence in obedience to any writ of subpoena or other process issued under the powers given by this Act, unless it shall be made to appear to such Court that a reasonable and sufficient sum of money to defray the expenses of coming and attending to give evidence, and of returning from giving such evidence, had been tendered to such person at the time when such writ of subpoena or process was served upon such person.

5. Nothing herein contained shall alter or affect the power of any of such Courts to issue a Commission for the examination of witnesses out of their jurisdiction, in any case, in which notwithstanding this Act, they shall think fit to issue such Commission.

6. Nothing herein contained shall alter or affect the admissibility of any evidence at any trial where such evidence is now by law receivable, on the ground of any witness being beyond the jurisdiction of the Court, but the admissibility of all such evidence shall be determined as if this Act had not passed.

## ADMIRALTY COURT BILL.

### COMMISSIONS TO SOLICITORS, PROCTORS, AND NOTARIES, TO ADMINISTER OATHS.

It shall be lawful for the Judge of the High Court of Admiralty of England, and he is hereby empowered, from time to time and as and when he may think fit, to appoint any person practising as a proctor, solicitor, or notary public in any part of England and Wales to administer oaths and take declarations, affirmations, and attestations in or relating to any matter, suit, or proceeding in the High Court of Admiralty of England; and such persons shall be styled "Commissioners to administer Oaths in Admiralty," and shall be entitled to charge and take a fee of 1s. 6d. for every oath administered by them, and for every declaration, affirmation, and attestation taken by them, subject to any order of the Judge of the said Court varying or annulling the same; s. 3.

The fiat or document by which any such Commissioner shall be appointed shall bear a stamp of 1*l.*, and it shall not be necessary that any such appointment should be published in the *London Gazette*; s. 4.

It shall not be necessary to sue out any commission to take the personal answers of any party in any matter, suit, or proceeding in the said Court; and any such answers may be filed without any further or other formality than is required in the swearing and filing of affidavits; s. 5.

It shall not be necessary to sue out any commission for the examination of any witnesses in any matter, suit, or proceeding in the said Court; and any examiner appointed by any order of the said Court shall have the like power of administering oaths as Commissioners now have under commissions issued by the Court for the examination of witnesses; s. 6.

All answers, examinations, affidavits, depositions on oaths, declarations, affirmations, and attestations in or relating to any matter, suit, or proceeding in the said High Court of Admiralty shall and may be sworn and taken in England and Wales before any such Commissioner appointed as aforesaid, or before any magistrate or justice of the peace or before any Commissioner to administer Oaths in Chancery; s. 7.

All answers, examinations, affidavits, depositions on oath, declarations, affirmations, and attestations in or relating to any matter, suit, or proceeding in the said High Court of Admiralty of England shall and may be sworn and taken in Scotland or Ireland, or the Isle of Man, or the Channel Islands, or any of them, or in any colony, island, plantation, or place under the dominion of her Majesty in foreign parts, before any Judge, Court, magistrate, notary public, or person lawfully authorised to administer oaths in such country, island, or plantation, or place respectively, or before any of her Majesty's consuls or vice-consuls in any foreign parts out of her Majesty's dominions; and the Judge and other officers of the said High Court of Admiralty shall take judicial notice of the seal or signature, as the case may be, of any such Judge, Court, magistrate, notary public, person, consul, or vice-consul attached, appended, or subscribed to any such answers, examinations, affidavits, depositions on oath, declarations, affirmations, and attestations, or the documents to be used in the said Court; s. 8.

Penalty for false swearing, &c.; s. 9.

Penalty for forging signature or seal of Judge, &c., empowered to administer oaths under this Act; s. 10.

The Judge of the High Court of Admiralty of England may, whenever it shall appear to him necessary so to do, authorise any person to administer oaths and to take affidavits, depositions on oath, declarations, affirmations, and attestations during the time such person shall be on the high seas, or in any place not within her Majesty's dominions, in or relating to prize proceedings in the said Court, and it shall not be necessary to affix any stamp to the fiat or document by which any such person shall be appointed; s. 11.

Power of Judge to issue commissions as heretofore, to administer oaths, &c.; s. 12.

Power to Court to proceed by way of motion; s. 13.

Her Majesty may by order in Council vary, alter, or abolish fees, and provide for their collection by stamps; s. 14.

After such order fees not to be received in money, but by means of stamps; s. 15.

Commissioners of Inland Revenue to give the necessary directions as to the stamps, and to keep separate accounts; s. 16

Provision for sale of stamps; s. 17.

Commissioners of Inland Revenue may make regulations as to allowance for spoiled stamps; s. 18.

Provisions of former Acts relating to stamps to be applicable to stamps under this Act: s. 19.

No document which by any order as aforesaid ought to have had a stamp impressed thereon or affixed thereto shall be received or filed or be used in relation to any proceeding in the High Court of Admiralty, or be of any validity for any purpose whatsoever, unless or until the same shall have a stamp impressed thereon or affixed thereto in the manner directed by such order: provided always, that if at any time it shall appear that any such document which ought to have had a stamp impressed thereon or affixed thereto has, through mistake or inadvertence, been received or filed or used without having such stamp impressed thereon or affixed thereto, the Judge of the said Court may, if he shall think fit, order that a stamp, not exceeding in value four times the amount of such original stamp, shall be impressed thereon or affixed thereto; and thereupon, when the proper stamp shall, in compliance with such order, have been impressed on such document or affixed thereto, such document, and every proceeding in reference thereto, shall be as valid and effectual as if such stamp had been impressed thereon or affixed thereto in the first instance; s. 20.

Officers guilty of fraud or wilfully neglect in relation to stamps liable to be dismissed; s. 21.

It shall be lawful for the Commissioners of her Majesty's Treasury, on the recommendation of the Judge of the High Court of Admiralty, to order to be paid to any person executing the office of registrar, marshal, clerk, or servant of the said Court, who shall be afflicted with some permanent infirmity disabling him from the due execution of his office, and shall be desirous of resigning the same, an annuity not exceeding two-third parts of the yearly salary which such person shall be entitled to at the time of his resigning the same, to be paid and payable at the same times and in the same manner as the salaries of the said registrar, marshal, clerk, or servant are; s. 22.

Except where it shall be otherwise expressed, the provisions of this Act shall apply to all instance, prize, and other matters, suits, and proceedings of which the High Court of Admiralty may legally take cognizance; s. 23.

## REAL ESTATE CHARGES' BILL.

THIS Bill, as amended in Committee and on consideration of Amendments, recites that it is expedient that certain rules of Law and Equity whereunder the real and personal assets of deceased persons are administered should be amended; and it proposes to enact as follows:

1. Where any person shall die seised of or entitled to any estate or interest in any land which shall at the time of his death be charged with the payment of any sum or sums of money by way of mortgage, and such person shall not, by his will or deed or other document, have signified any contrary or other intention, the heir or devisee to whom such land shall descend or be devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate, but the lands shall, as between the different persons claiming through or under the deceased person, become primarily liable to the payment of all mortgage debts with which the same shall be charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof: provided that nothing herein contained shall affect or diminish any right of the mortgagee on such lands to obtain full payment or satisfaction of his mortgage debt either out of the personal estate of the person so dying as aforesaid or otherwise.

2. When any person shall die seised of or entitled to any land for an estate of inheritance, and having the power to dispose of the same by will, and shall have by his will directed the same to be sold for the payment of his debts or the purposes of his will, then unless such person shall by his will have signified any contrary or other intention, the land so devised shall be deemed by a Court of Equity to be converted into personal estate, and the whole, or any portion thereof that may not be required for the purposes mentioned in the will, shall be divided under the Statute for the Distribution of the Estates of Intestates.

## EXTENSION OF INCLOSURE ACTS.

1. LANDS subject to be inclosed may be exchanged pending inclosure proceedings.

2. Undivided shares in any land or other subject matter of exchange may be exchanged upon the application of the person interested.

3. Land to include incorporeal hereditaments.

4. Where any land or hereditaments shall have been leased for a term which shall have exceeded 100 years from the commencement thereof, and it shall be shown to the satisfaction of the Commissioners that no rent or acknowledgment has been paid or given for the period of 20 years, or that the person entitled to the rent reserved upon such lease cannot, upon reasonable inquiry, be ascertained, the person in the actual possession or enjoyment of such land or hereditaments, or in the actual receipt of the rents and profits thereof as owner of such term, shall be and be deemed to be the person interested within the provisions of the Inclosure Acts.

5. Extending time for application for conversion of land to be inclosed into a regulated pasture.

6. Extending time for enrolment of awards under Common Fields' Act or Local Act.

7. Tenure of allotments in respect of rights.

8. Fencing and making roads dispensed with, in certain cases.

9. In all cases where any lands or hereditaments are charged with any fee-farm rent, rent seck, rent of assize, or chief rent, or other annual or periodical fixed rent, or other certain payment, any person interested, according to the provisions of the said Acts, in such lands, and in the said rent or other certain payment as aforesaid issuing therefrom, may make application in writing to the said Commissioners to apportion the said rent or other fixed payment among all the lands charged with the payment thereof, and the Commissioners, upon receipt of such application, shall, by themselves, or by an Assistant Commissioner, or other person to be by them appointed for that purpose, make inquiry, and satisfy themselves as to the expediency of such apportionment; provided always, that if in any case there shall be any doubt as to the extent, identity, or boundaries of the lands and hereditaments charged with any such rent or payment, the Commissioners, Assistant Commissioner, or other person appointed by them as aforesaid, shall inquire into and ascertain such extent, identity, or boundaries.

10. If the said Commissioners, after inquiry made, shall be satisfied of the expediency of such apportionment, they may, by an order under their hands and seal, apportion such rent or other fixed payment among all the lands charged with the payment thereof, and also, where necessary, determine the extent, identity, and boundaries of the land and hereditaments charged with such rent or payment; provided that any specific portion may, upon the application of the person interested in such lands, be charged and apportioned upon any close or closes or other part of the estate in respect of which the said portion of rents or other fixed payment was apportioned, so that in the judgment of the said Commissioners such part of the estate be of not less than six times the annual value of the sum so charged thereupon.

11. Confirmation of order by the Commissioners.

12. And from and after the confirmation of the said order the owner for the time being of the said rent or other fixed payment as aforesaid, so far as the same has been apportioned upon the lands of persons interested and making application as aforesaid, shall have all such rights and remedies for the recovery of the apportioned parts of such rent or other fixed payment as against the portions of land severally charged therewith respectively as such owner would have had for the recovery of such rent or fixed payment as against the lands originally charged therewith in case no such order had been made.

13. The persons making such application as aforesaid shall pay the expenses incident to such apportionment in such proportions and to such amount as the Commissioners shall certify in

that behalf; and the Commissioners, or any person authorised by them for that purpose, may take all such proceedings, and have all such remedies for the recovery of such expenses, as they, or the valuer acting in the matter of any inclosure, now have or may at any time hereafter by law have for the recovery of the expenses of or incident to any inclosure under the powers of the said retitled Act.

14. Where any money shall have been or may hereafter be paid to a Committee under "The Lands' Clauses' Consolidation Act, 1845," or under any railway or other special Act by which money may have been directed or authorised to be paid to a committee as compensation for the extinction of commonable or other rights, or for lands, being common lands or in the nature thereof, the right to the soil of which may have belonged to the commoners, and the majority of such Committee shall be of opinion that the provisions of such Act for the apportionment thereof cannot be satisfactorily carried into effect, such majority may make application in writing to the Commissioners to call a meeting of the persons interested in such compensation money, to determine whether or not such compensation money shall be apportioned under the provisions of this Act.

15. If the majority in number and interest shall resolve that such compensation money shall be apportioned, the amount of such compensation money shall be forthwith paid into the Bank of England, to the credit of an account to be named by the Inclosure Commissioners for England and Wales; and the said Committee shall be absolutely discharged from all liability in respect of such compensation money upon payment thereof into the Bank of England as hereinbefore directed.

16. As soon as the said moneys shall have been paid into the bank, the Inclosure Commissioners, or any Assistant Commissioner, shall proceed to ascertain, determine, and award the names of the parties who were entitled to such estates, rights, and interests in the said common and commonable lands, and the amount or value of their respective shares, rights, and interests therein, and the proportionate amount of the price so to be paid as aforesaid for such estates, rights, and interests to which each party so entitled as aforesaid is entitled, in respect of his share, right, or interest as aforesaid; and the award of the Commissioners under their common seal, or Assistant Commissioner in writing under his hand and seal, shall be binding on all parties claiming such estates, rights, and interests as aforesaid; and for the purpose of ascertaining the rights and interests of such parties as aforesaid it shall be lawful for the said Inclosure Commissioners or Assistant Commissioner to call such meetings as they or he shall think fit of all persons having or claiming any such rights or interests in the said common and commonable lands as aforesaid, at such time and place as the said Commissioners or Assistant Commissioner shall think fit, so as the same shall

be appointed by a public notice thereof in writing to be affixed at least twelve days before such meeting on the principal outer door of the parish church in which such land or any part is situate; and to be inserted in one of the public newspapers published or generally circulated in the county in which such land is situate; and at such meeting the said Commissioners or Assistant Commissioner do and shall proceed to examine into and ascertain all and every the claims which shall be made or put forward in respect of any such rights or interests as aforesaid, and the relative and proportionate value of the estates, rights, and interests of any person or persons claiming to be entitled thereto, and for that purpose do and may employ any valuer or surveyor, and call for and receive such records, deeds, and writings, and such other proof or evidence as the said Commissioners or Assistant Commissioner may think fit; and they and he are and is hereby authorised and required to take the testimony of any witnesses upon oath (which oath they and he are and is respectively hereby empowered to administer), or to take the affirmation of such witnesses in cases where affirmation is allowed by law instead of oath.

17. All the costs and expenses of the Inclosure Commissioners and Assistant Commissioner, and of any valuer or surveyor employed under the provisions hereinbefore contained, shall, in the first place, be paid out of such compensation moneys, and the residue of the said moneys shall be paid and divided between and amongst the said several parties to be named in the award, and in the shares and proportions to be ascertained and set forth in such award.

18. When it shall appear to the Commissioners or Assistant Commissioner that any of the parties entitled to such rights or interests are only entitled thereto for a limited interest, then it shall be lawful for them or him, by their or his award, to direct that the moneys to be paid in respect of such right or interest, where the same shall exceed 20*l.* shall be paid to the trustees acting under the will, conveyance, or settlement under which such person having such limited interest shall be interested in such rights or interests, and where there are no trustees then into the hands of trustees to be appointed under the hands and seal of the Commissioners, to be held by them on trusts similar to the uses or trusts to which such rights or interests had been immediately before the payment of such moneys into the bank subject to, or as near thereto as the said Commissioners or Assistant Commissioner can ascertain; and the rights or interests of all parties to be ascertained in such award as aforesaid shall, as from the payment of such moneys to such Committee as aforesaid, be taken and considered as personal estate; and the receipts of any trustees to whom any such moneys shall be paid as aforesaid shall be good and sufficient discharges for the same: provided that the payment of all such sums shall from time to time be subject to such rules and regulations,

for the purpose of ensuring the payment thereof to the person or persons duly entitled to receive the same, as the said Commissioners shall by any order direct.

19. In all cases where the sum payable by virtue of such award, in respect of any estate, right, or interest, shall not exceed 20*l.*, and the person entitled to such estate, right, or interest shall be under any disability or incapacity, such sum shall and may be paid to the guardian, committee, or husband of such person; and where any such person shall have a limited interest only in such estate, right, or interest, the whole of such sum shall and may, nevertheless, be paid to the person having such limited interest, to his or her guardian, committee, or husband, as the case may be.

20. This Act to be deemed part of "The Acts for the Inclosure, Exchange, and Improvement of Land."

## LAW OF ATTORNEYS AND SOLICITORS.

### TAXATION OF BILL OF COSTS IN BANKRUPTCY, WHERE LACHES.

THE solicitor to a fiat in bankruptcy was discharged in July, 1851, and another appointed, and it appeared that he had delivered his bill of costs in the year 1850, and that its amount had been either paid to or retained by him out of the moneys received on account of the estate. The new solicitor, although acquainted with these facts on his appointment, had not taken any objection to the bills nor intimated any intention to tax them before October, 1852. On an appeal from the Commissioner directing a taxation, Lord *Cranworth*, L. J., said, "I confess that I entertain great doubt whether there is authority, in the absence of a case of fraud, to interfere under the summary jurisdiction which is given or regulated by the Act. The provisions of the 37th section are all directed to the taxation of bills remaining unpaid. Then the 41st clause is directed to bills which have been paid, and it contains this proviso: 'Provided the application for such reference be made within 12 calendar months from payment.' I doubt whether there was any jurisdiction to direct taxation; but, if there was, certainly this does not appear to be a case for its exercise; the bill having been paid seven months before another solicitor was appointed, and no proceedings having been taken for a year and a half after the application was made." *Ex parte Pemberton, in re Tyther*, 2 De G., M & G. 960.

## LAW OF COSTS.

OF SUIT TO REDEEM WHERE TENDER  
BY MORTGAGORS.

THE parties, in whom a mortgage became vested, demanded by notice payment by the persons entitled to the equity of redemption, of the mortgage money, and stated their intention, in default of payment to sell the property. At the expiration of the notice, and in consequence of difficulties arising in ascertaining what was due, the mortgagors made, on March 18, 1853, an unconditional tender of 570*l.*, which was according to their calculation sufficient to pay the amount due for principal, interest, and costs. The mortgagees declined to receive such amount, and the mortgagors then filed this suit to redeem.

On a question as to the costs of the suit, the *Master of the Rolls* said,—“I am of opinion, that when the time fixed by the notice expires, the mortgagee is bound to know the amount due to him, and if that sum or a sum calculated by the mortgagor to be the probable amount of principal, interest, and costs, be tendered to him, unconditionally, he is bound to accept it. A mortgagee is not bound to accept payment without proper notice given to or by him; but if, after proper notice, the amount is tendered to him, and he refuses to accept it, he does so at his own peril.

“In *Harvey v. Tebbutt*, 1 Jac. & W. 197, Sir Thomas Plumer lays it down that a mortgagee is not, in all cases, entitled to his costs; and in *Shuttleworth v. Louther* (cited in *Detillin v. Gale*, 7 Ves. 586), the mortgagee was even held bound to pay costs. In *Wilson v. Cluer*, 4 Beav. 214, a mortgagee in possession being found, on taking the account, to have been overpaid, costs were given against him. So in *Roberts v. Williams*, 4 Hare, 129, the sum tendered to the mortgagee before suit being greater than the balance found due, he was ordered to pay the costs; and in *Smith v. Green*, 1 Coll. 555, the mortgagee was deprived of his costs. In all these cases there was a dispute as to the amount, but upon its appearing that the full amount had been received by, or tendered to, the mortgagee, the Court held, that he was not justified in compelling the mortgagor to institute a suit for the purpose of taking the account.

“A mortgagee is, no doubt, favourably looked on by the Court; but he will not be allowed, by disputing the account, to throw the expenses of an unnecessary litigation upon the mortgagor. In this case, I am of

opinion that there has been an unconditional tender to the defendants of a sum, which they might either accept or refuse at their own peril. There must, therefore, be a decree for an account of what was due for principal, interest, and costs on the 18th of March last; and if the amount found due should not exceed 570*l.*, then the defendants must pay the costs of the suit, but if the amount should exceed that sum, then there will be the usual decree as to costs as if there had been no tender.” *Harmer v. Priestley*, 16 Beav. 569.

## UNITED LAW CLERKS' SOCIETY.

WE are glad to place before our readers a full report of the excellent addresses which were delivered at the Annual Festival of this valuable Society, by Vice-Chancellor Sir Wm. Page Wood, who presided, and by both the Lords Justices and other distinguished members of the Profession, who kindly attended the meeting, and eloquently advocated the cause of the Society. We gave the Annual Report in a recent Number (p. 164, *ante*), and would now particularly call the attention of our brethren to the important fact, that an eminent firm had come to the resolution of extending relief during age or sickness to such of their clerks as were members of the United Law Clerks' Society. A small annual subscription by each clerk will thus secure them from calamities to which all are liable, and if the solicitors would take the trouble of exhorting their clerks in general to join the Society, its numbers would soon place it in a position that would enable the Committee to increase the liberal measure of relief to all the members who may require it.

The Twenty-Second Anniversary Festival of this Society was celebrated at the Freemasons' Tavern, on Thursday, 22nd June. The Vice-Chancellor Sir William Page Wood presided on the occasion, and was supported by the Lords Justices, Mr. Serjeant Shee, Mr. Daniel, Q. C., and a numerous assemblage of each branch of the Profession. About 300 gentlemen sat down to dinner.

The *Chairman*, in proposing the health of her Majesty the Queen, said, he felt confident that it was quite unnecessary for him to add anything to commend the toast to the warm reception of that assembly, and he would at once propose “The Queen.”

The toast was most cordially responded to.

The *Chairman* proposed the health of his Royal Highness Prince Albert, Albert, Prince of Wales, and the rest of the Royal Family.

Many and great were the blessings which they owed to Prince Albert as the Consort of her Majesty. When they considered how much the happiness and welfare of England depended on having a good example set in the home of the Sovereign,—when they reflected on how much the happiness and welfare of the country was involved in the peace of mind and quiet repose of the Sovereign herself, so as to enable her to discharge all the duties of her state with thoughtfulness, and a calm, undisturbed, and happy mind,—he felt that he was not asking too much when he called upon them to join with enthusiasm in drinking the toast he had proposed. There was much reason to remember the preserving industry which his Royal Highness manifested in procuring for us the Exhibition of All Nations in 1851. He trusted that the Prince might long be spared to witness the good and happy results of his peaceful efforts, and that the Prince of Wales and the rest of the Royal Family might long continue under his parental charge.

The *Secretary* (Mr. Rogers) then read the report.

The *Chairman*, in proposing the toast of the evening — “Prosperity to the United Law Clerks’ Society,” said, they had met there on an occasion extremely gratifying to them all, as it was not only for the purpose of enjoying a very happy convivial day, but also for the purpose of discharging an important duty—for he held it to be an important duty, that they should thus annually encourage each other in a work so useful, and which, he was happy to add, was increasing so prosperously, as appeared from the statement they had just heard read. One of the most pleasing features in the report, to his mind, was, that of the fund contributed during the last year, no less than 1,100*l.* had been contributed by the *members themselves*. The only subject of regret was, that the funds of the institution were not so great as every one would wish them to be—a defect, however, which he hoped would be in some degree remedied before they separated that evening. It was in the power of those present to render service to the institution by using their influence amongst the members of the Profession, in inducing them to become subscribers. Every one who had others in his employ to whom he might conceive the Society afforded the means of providing a resource for their comfort and support in the time of misfortune and old age, had it also in his power to bring the subject forcibly before them, and induce them to become members of the Society. Every Christian was bound to assist a brother in his distress; but in supporting such an institution as the one in whose behalf they were assembled, the increased pleasure was afforded of knowing they were assisting those who are willing and who make every effort to assist themselves—at the same time holding out inducements to persons to become members of the Society, which he hoped would increase its number of members from 500 to 1,500 before the next anniversary came round.

It might be imagined by some that the Society was already too prosperous and had too much money, and that the benefit given to members in sickness and misfortune ought to be increased. But he was happy to say that the Society was founded upon right principles, and, acting under very able advice, avoided many of the dangers encountered by societies of that nature—namely, by taking too sanguine a view of the state and prospects of their finances. It should be borne in mind that that was only the 22nd year of its existence, and that the period of its trial and distress was yet to come.

The statement read to them contained one most extraordinary fact, namely, that among upwards of 500 members and their wives—together between 700 and 800—only one death had occurred during the past year. That fact spoke loudly in favour of the character of those who belonged to the Profession of the Law, and showed that they were men of temperate habits, and had guarded themselves against the excesses which so largely contribute to swell the bills of mortality—proving themselves to be men who did not “mix hot liquors with their blood.”

It appeared from the statement that a considerable sum had been expended during the year in aid of members of the Profession who did not belong to the Society, and this he considered a feature of considerable importance, and one that is not usually found in Associations of this nature. There was also another distinguishing mark in connexion with the benefits conferred by the Society, namely, that they were granted, not for any precarious period, nor for any deferred period, but as soon as necessity required it, and that assistance was continued through life, or until the necessity for it should cease. But looking to the fact that pressure will hereafter take place, and that some increase was about to be made to the usefulness of the institution by the formation of a *library*, it would be seen how much reason there was that every one interested in its welfare should exert himself in its behalf. The library of the Society would be invaluable; at the present time when so many changes were taking place in the Court of Chancery, there was great necessity for increased facility for reading and obtaining information on matters of law and practice by those in the habit of attending the Chambers of the Judges and other officers of the Courts. When they had a library to meet in they would be more and more brought together; and it was important for every profession that there should be a continual union amongst its members. The Solicitors and Attorneys had now the means of communication afforded to them by the great Institution they had founded in Chancery Lane; and it only remained for the members of the Law Clerks’ Society to devise some similar means of bringing themselves into contact with each other, and he believed none would be found so useful as the formation of a library.

He quite approved of the system adopted by the Society of inquiring into cases for relief, for in his opinion relief without inquiry was useless. He could not but refer to the delight and satisfaction which he experienced at meeting them all on occasions such as the present, when the different branches and members of the Profession were gathered together; and he trusted they would always part with renewed feelings of kindness towards each other, with renewed determination to exert their interest to the utmost to that end; and that this great Profession, to be a member of which he had always felt to be a great distinction, would continue to be united as one harmonious whole. He would conclude by proposing "Prosperity to the United Law Clerks' Society,"—a toast which recalled to them the object for which they were assembled, and which they would drink he trusted, not merely with their lips, but with the deep feeling of their hearts.

The *Secretary* announced the list of subscriptions which amounted to nearly 400*l*.

Mr. Serjeant *Shée* proposed the next toast,—"The Lord Chancellor and the other patrons of the Society." When he considered the great advantages which that Society conferred upon the whole body of the Profession—not merely upon those who might be supposed to be the most likely to become recipients of its pecuniary benefits, but of the whole body of the Profession, from the highest to the lowest,—he could not but think that those members of the Profession who had arrived at high station, and who were then in the position of patrons of it, deserved to have their names mentioned and received with great respect and honour. It was a great mistake to suppose, however great might be the personal merits, however great the learning, however distinguished the political station of those patrons of that Society, that they owed all the advantages they now possess or the station they filled solely to their own merits. They owed them in a great degree to the sound judgment and intelligent appreciation of the great body of the Profession. He believed the patrons of the Society had at some time or other presided at their annual meetings,—many, if not all, the members of the Bar had contributed to its funds,—and all were well wishers of the institution. He was sure there was no one present who would not join with him in drinking heartily the toast he had proposed.

The Lord Justice *Knight Bruce* returned thanks. In the absence, and perhaps in the presence of some better entitled to acknowledge that kindness, he did so for those on whom it had been conferred; and he would venture to answer for the heartiness with which they had desired, and continued to desire, the success and prosperity of the institution in honour of which they were there assembled—an institution of which he would only say that its views and ends were such as importantly to concern the interests of all who have anything to do with law and lawyers, and

to law and lawyers it was the fate of almost every man sooner or later to have recourse. The views and ends of the institution, he said, were such as to interest every portion of society—and which, in the absence of those higher influences which ought to impel us in the cause of Christian brotherhood and good will, ought alone to be sufficient to induce us to take an interest in its welfare. But it was not mere personal considerations that influenced those on whose behalf he thanked them—he asserted for them the impulse of a higher influence.

Being in possession of the company, he would ask their leave to propose a name well known to them all. It was not with a view to shorten the time or the proceedings of that meeting, but because the name belonged to one to whom they were under special obligations for the meritorious manner in which he filled his laborious and weighty office. He was sure they would all cordially join in drinking the health of the Chairman.

The *Chairman* returned thanks. He scarcely knew how to express himself for the warm terms in which his health had been proposed, and for the kind manner in which it had been received by the company. He was truly happy to have amongst them the Lords Justices, who shed lustre wherever they might be. One of them (the Lord Justice Knight Bruce), had filled, and far more worthily than he had been enabled to do that evening, the office of chairman, on the occasion of an anniversary festival of the Society, in Lincoln's Inn Hall; and the other (Lord Justice Turner) had kindly promised to fill that office at the next anniversary. It was not with him as it had been in former years with persons filling his office, who must have found it an exceedingly unpleasant thing to sit in judgment and to consider that any error they might happen to make, would not be corrected for years afterwards—thanks to the recent alterations in the Court of Chancery, that which would have formerly required a course of years could now be done by the Lords Justices in a few weeks. In conclusion, he again expressed his thanks for the manner in which they had drank his health, and also for the kind assistance which, as a Judge, he had experienced from their labours and industry on all occasions.

Mr. *Daniel, Q. C.*, proposed "The Bench, the Bar, and the Profession of the Law," and in doing so remarked that the Profession of the Law—as far as they were concerned, had connected with it both hopes and fears. It presented to some the glorious achievements of the past—to others the anxious destinies of the future—to all it presented encouragements to duty, as well in support of that which they then had as that to which they were looking forward. He had had the pleasure on several occasions of being present at the annual festival of the Society—he would not say that the gratification he felt that evening was greater—it was enough to say that it was equal to that which he had felt on any former occasion. He had much pleasure

in proposing "The Bench, the Bar, and the Profession."

The Lord Justice Turner said, as his name had been associated with the toast, he could not have any hesitation in taking upon himself the duty of thanking them for its reception. He thought the toast a very good one, combining as it did the whole Profession. He believed that so long as the Profession remained united, it would be difficult to make any impression unfavourable to its continuance or prosperity. They would all remember the old fable of the bundle of sticks: how easy it was to break them singly, and how impossible it was found to do so when bound together. This old fable should teach the Profession a great lesson,—when united together for objects important and right in themselves they could not be assailed successfully, but when disunited they were unable to protect themselves from injury. Union for a just and righteous cause was meritorious. Disunion amongst those who were aiming at the accomplishment of a just and proper object only excited our pity and contempt. Every person amongst them who had others in his employ must know how much his personal interest was connected with those immediately in his service, and he thought they would all feel it was their bounden duty to render assistance and support to those dependent upon them, and who were members of this Society. It was to him personally a great gratification to see so many assembled that evening, and he hoped the results would be conducive to the best interests of the Society, and that it might continue to flourish as it well deserved.

Mr. W. Rogers proposed the health of the trustees of the Society, which was warmly responded to.

Mr. H. W. Cole returned thanks in the absence of the trustees.

The Chairman then proposed the health of the Ladies, who, he trusted, might never have a more disagreeable impression of the Law than had been made upon them that evening.

## NOTARIAL ATTESTATION OF FOREIGN AFFIDAVIT IN BANKRUPTCY.

AN affidavit under the 12 & 13 Vict. c. 106, s. 243, purported to be sworn before a magistrate at New York, and there was a notarial certificate that the gentleman described in the jurat as a magistrate actually filled that office.

On an objection being taken to the sufficiency of the attestation on the ground that the notary was not present when the affidavit was sworn, Lord Cramworth, L.J., asked if there was any settled practice or authority upon the point? and being informed that none had been found, said, that if there were no

precedent, the Court would make one in this case. That such a form of attestation was sufficient appeared plain. The Legislature intended that affidavits should be sworn before some functionary duly authorised to receive them, and that where such functionary was a foreign functionary, the fact of his authority should be attested by the certificate of a notary. Where affidavits were made before a British minister, consul, or vice-consul, no notarial certificate was required; and the reason for that was, because the fact of such persons filling their respective offices was easily capable of proof, independently of any notarial attestation or certificate. *Ex parte Bird, in re Carne*, 2 De G., M'N. & G. 963.

## SIGNATURE OF EXTRACTS FROM PARISH REGISTERS.

CERTAIN documents purporting to be copies of, or extracts from, parish registers, were signed thus:—"A. B., incumbent," or "A. B., rector," or "A. B., vicar," or "A. B., curate."

The Lords Justices said, that the words *rector* or *vicar*, in the copies might, by a reasonable intendment, be taken to mean rector or vicar of the parish or place mentioned in the copy, but that where the words were only *incumbent* or *curate*, it might be a question whether such persons were the proper persons to have the custody of registers. Solicitors would save themselves and the Court much trouble, and their clients expense, if in all such cases, to the name of the person signing the extract, the words "of the aforesaid parish" were added. *In re Hall's Estate*, 2 De G., M'N. & G. 748.

## MANOR OF KENNINGTON.

### ENFRANCHISEMENT OF COPYHOLDS.

To the Editor of the Legal Observer.

SIR,—Your correspondent "FAIR PLAY," on the 8th July, charges the petition of the copyholders of the Kennington manor (which was inserted in *The Observer* of June 17) with "passion, prejudice, unfairness, and injustice." Heavy charges, no doubt, if true, and which he makes a mere show of supporting in the following easy and off-hand way:—

1. "The tone of the petition generally" (says "FAIR PLAY!") "and the charge of attempted extortion shows passion." Now, with regard to "the tone" of the petition, if your correspondent's mode of argument had been a little more in unison with his signature, if in fact he had not been himself blinded by one



or all of the four faults which he charges upon the petition, he could not have failed to see that all the strong language contained in it, and which is comprised in the passages given in italics, is that—not of the petitioners themselves, but—of the Real Property Commissioners and of the Select Committee of the House of Commons, and is merely cited by the petitioners as the opinions of very high authorities, in support of the prayer of their petition. The charges of *causing litigation and extortion, of much needless expense and difficulty, of preventing or checking improvements, and of materially diminishing the public wealth*, are charges brought against copyhold tenures generally by the Real Property Commissioners. The stigma of being *ill adapted to the wants of the present day, and a blot on the judicial system of the country,—of being highly inconvenient to the owners of the land and prejudicial to the general interests of the State,—and of operating, where the fine is charged upon the improved value, as a tax upon the capital of the copyholders and a direct check to all building and all agricultural improvements*,—is a stigma attached to copyhold tenures, not by the petitioners, but by a Select Committee of the House of Commons. The strong and energetic language employed (as appears above) both by the Commissioners and by the Committee, in the discharge of solemn public duties, sufficiently indicates their respective opinions as to the nature and extent of the mischiefs and inconveniences arising out of copyhold tenures; and the term “*extortion*,” objected to by “*FAIR PLAY*,” nowhere occurs in the petition, except in the passage above quoted from the Report of the Commissioners. The charge of “*passion*,” therefore, as applied by an anonymous writer to these two public authorities, is simply ridiculous.

2. “The attack on the system of copyholds universally, because in a single manor inconvenience may be felt under special circumstances, shows prejudice.” It requires but a very small degree of discrimination to perceive that the language employed both by the Commissioners and the Committee, and likewise the opinions of the eminent lawyers, statesmen, and political economists, referred to by the petitioners at the outset of their petition, point expressly to the objections and evils incidental to copyhold tenures generally, and by no means to any inconvenience felt merely under *special circumstances in any single manor*. The prayer of the Kennington copyholders’ petition points to two different objects, the one to remedy the mischiefs in their own manor, the other to redress the grievances incidental to copyholds generally. The authorities cited are cited of course in support of the latter object which disposes of the charge of “*prejudice*.”

3. “Quoting the opinion of the Committee (says “*FAIR PLAY*”) “in favour of the entire abolition of copyholds, and keeping back the carefully prepared 6th Report of the Commissioners made long subsequently, and in which

they recommend the continuance of the tenure with commuted rights, shows *unfairness*.” The cause of unfairness in omitting to notice the Commissioners’ 6th Report, would of itself be unfair, unless such omission was intentional, which I am warranted in saying it was not. But on looking carefully at this report, I find no ground whatever for alleging that the Commissioners have at all *changed their opinion* as to the *desirableness* of entirely abolishing copyhold tenure, although on account of the opposition in certain quarters, and other adverse influences, they doubt its practicability. They, therefore, recommend “a limited system of *compulsory commutation*,” but it is to be such a system as will entirely remove, not merely what they here call the “ *vexations*,” but likewise what they denominate “*the substantial economical evils of the copyhold tenure*.” These (they again assert) consist in *uncertain fines* which drive capital from improvements on the land, and in rights of timber, and to a control over buildings, *which rights are found pernicious*.

A reference to that report seems, however, in fact to be of less consequence, inasmuch as the House of Commons, which is the authority that must chiefly deal with the question, has in no way indicated that even such a commutation of rights would be considered by it as an adequate substitute for “*the abolition of copyhold tenure*,” which the Committee has declared (as stated by the petitioners) “*would not only be a great public benefit, but should be made, if possible, a national object*.” This disposes of the charge of “*unfairness*.”

4. “The attempt to deprive the lord of a portion of the rights to which he is clearly entitled, subject to which the copyholders took their property, and the extent of which they had ample means of knowing, shows “*injustice*.” Instead of an argument, this is a mere *petitio principii*, a begging of the whole question at issue between the authorities and the copyholders of the manor of Kennington. It is denied *in toto* that the lord is entitled to the rights of which the copyholders complain. But to come to proofs.

Take, for example’s sake, the case of a small plot of copyhold ground which has become eligible for building, and is now let for that purpose. Suppose this ground, with a frontage of from 40 to 50 feet to have been worth 1*l.* a year in its original state as land, and being now built upon, to be at present worth 10*l.* a year by way of ground-rent to the lessor or copyholder, and 100*l.* a year by way of improved or occupation rent to the lessee or builder, under a lease for a term of (say) 70 years. Now, it is quite clear that the advantage which the lessor or copyholder derives from this building operation, is the immediate conversion of a rent of 1*l.* into one of 10*l.* a year, thus at once increasing the value of the property ten fold, with the future prospect in reversion of the improved rent of 100*l.*, thus increasing it again on the expiration of the term in the same ratio. This being so, can

anything be more clear than that the amount of advantage to the lessor or copyholder, in the way of present and prospective rent is, or ought to be the precise measure of advantage to the lord, in the way of present and prospective fine, and one with which he ought to be abundantly satisfied. Upon the original value of the land he was entitled on death or alienation to a fine of 2*l.*, being two years' value, and no more. Being now built upon, he is become entitled to a fine of 20*l.* on the ground-rent reserved; and on the expiration of the lease, *but not before*, he can fairly claim a full fine of 200*l.* on the rack-rent or improved value. During the continuance of the lease this rent (minus of course the ground-rent) belongs by clear and indisputable right, to the lessee or builder, and to no one else. It is the equivalent he gets for his expenditure in building, which expenditure is the sole cause of the improved value of the land. To obtain, therefore, this improvement, the copyholder must be contented with the progressive increase of his rent, first from 1*l.* to 10*l.*, and ultimately from 10*l.* to 100*l.*, and with the same object in view, the lord must be contented with the progressive increase of his fine in the same ratio. But if he is so unreasonable as to desire to charge the copyholder with a *present* fine upon a *future* and *remote* interest, let us see how this palpable injustice will work.

Suppose a copyholder or lessor to die, and that the lord demands from the heir or devisee a fine of 200*l.*, being two years' improved value, this is in fact a tax upon the interest, both of the lessor and the lessee, the latter being entitled to no more than 90*l.* a year after deducting the ground-rent. But suppose again, that in order to avoid the anomaly and odium of taxing *both* parties, his own immediate tenant and his tenants' tenant, the lord allows the ground-rent to be deducted and assesses the fine at 180*l.* This exorbitant charge upon the copyholder, whose entire interest or customary fee before the land happened to become available for building, was worth at (say) 24 years' purchase on the original rental, about 24*l.*, and no more, and on the present ground-rent about 240*l.*, amounts to an absolute confiscation of something like two-thirds of his property! Although all these figures are, of course, assumed, for the purpose of argument and illustration, yet, keeping in view the relative proportion which the ground-rent upon a building lease usually bears to the improved or rack-rent, it will be found in practice that upon this comparatively novel mode of assessing fines, an amount varying from one-half to about two-thirds, would be the *average* measure of this unjustifiable confiscation. Let us now follow the exaction and its consequences, to its next stage.

To place these consequences in a clear light, we will suppose that the heir or devisee, not being provided with the money, mortgages the property for 180*l.* to satisfy the fine, although, if he should pay it out of his own funds, the effect is precisely the same. Suppose next, that after a few years the copyholder, either

being tired of paying interest at a rate which nearly absorbs his rental, viz., 8*l.* or 9*l.* out of 10*l.* a year or from pressure, or any other cause, resolves, or is obliged to sell, another fine thus becomes payable. If, on the other hand, the copyholder should happen to die, his representatives would, of course, find themselves in no more enviable position than himself. In either case the lord now comes to give the orange another squeeze, forgetting that, as he extracted two-thirds of the juice before, there is now only one-third left. But resuming, for the purpose of illustration, the case of sale, how are all the demands to be satisfied? The present value of the copyholder is about 240*l.* Of this sum the mortgagees' claim 180*l.*, being in fact the amount of the former fine. The copyholders' equity of redemption is, therefore, worth no more than about 60*l.*, and upon this the lord again demands a similar fine, being about thrice the amount! Whether this is to be paid by the vendor, or by the purchaser, signifies nothing to the purpose, for it is at any rate the copyhold which must pay it. If an intending purchaser finds that, instead of assessing fairly a fine of 20*l.* upon the ground-rent, which is the thing he is about to buy, he will have to pay 180*l.* in respect of the improved or rack-rent, which belongs to somebody else, and which will not come within his own grasp for perhaps 50 years to come, he will of course do one of two things: he will either decline to buy at all, or he will deduct the proper fine from the fine exacted, and will then give just 160*l.* less for his copyhold than he would otherwise have given and than it ought to be fairly worth,—that is to say, 100*l.* instead of 240*l.* If, therefore, the lord persists in his unjust demand, the vendor will not only be mulcted of his equity of redemption, but must make good the deficiency to the mortgagees; or, if unable to do so, the latter must likewise be mulcted of nearly half his mortgage-money. If, however, it should happen, in some more favourable instance, that the ground-rent, which represents the value of the copyholder's interest, should bear a somewhat larger proportion to the rack-rent, on which the lord unreasonably demands to assess his fine, then it might possibly confiscate not more than about one-half of such interest. In this case, the mortgagee might get back his money, which went to pay the first fine, and the lord would take all the rest in satisfaction of the second.

To return, then, to the case of the manor of Kennington,—whether such a *right* as this be, as your correspondent, "Fair Play," asserts, "a portion of the *rights* to which the lord is clearly entitled," and the resistance to which fairly lays the copyholders open to the charge of "injustice," may be safely left to any impartial person to decide. It presents one insuperable bar, (as laid down by the Committee of the House of Commons) to all buildings and improvement, and the refusal to grant any license for a building lease for a longer term than 30 years, unquestionably presents an-

other. It is said to be a fact, that in some of the royal manors acts of injustice and oppression are sometimes committed by the authorities which are elsewhere unknown, simply because the high personages who are the parties really interested, and who would readily redress such grievances if known, are of course entirely ignorant of the practical working of the system complained of. But can your correspondent point out any other manor within the kingdom of England, in which the lord (blind alike to his own real interest and to that of the copyholder) demands a fine which on the next repetition amounts to confiscation, and refuses to grant a building lease for a longer term than would suffice for the erection of a mud hut or a cabin of lath and plaster! If he can, perhaps he will have the goodness to name it, and thus afford the opportunity of ascertaining how much building takes place within the manor, and how the system in general works.

Your correspondent would console the copyholders of the manor of Kennington by assuring them that if any inconvenience (!) has in certain cases arisen, it "has arisen solely from the want of a little common sense on the part of the copyholders"! "An ignorant impatience of taxation," no doubt, but excusable, one would hope, where it involves a positive confiscation. They might possibly be willing to compound for the singular compliment paid to themselves, if they could be spared in future the "inconvenience" inflicted on their pockets. Your correspondent refers to some fortunate manor with which he is connected—it would seem as steward—and in which he is enabled to get over this *pons asinorum* with the greatest ease. I apprehend, however, that it must be by some more convincing logic and more persuasive eloquence than he displays in his letter, that he contrives to induce both copyholder and builder to work so harmoniously together for the benefit of the lord. But, on the slightest examination his grand panacea appears to be founded on a palpable fallacy. He says that no copyholder should grant a lease for building purposes, "without making it one of the terms of the lease that all payments for fines, beyond two years' purchase on the rent reserved, should be payable by the lessee" (!) which, without at all relieving the copyholder, would merely put the original grievance in another shape. In 9 cases out of every 10, or more probably 19 out of 20, the builder, declining to travel beyond the usual and intelligible principle, of so many feet frontage, at so much per foot, would refuse altogether to be hampered by such a stipulation. In the tenth or twentieth case, the builder who might be foolish enough to accede to it, and thus to fetter and complicate a common building transaction, and all future sales and mortgages of his lease, with questions for an actuary, would require to be indemnified against such contingent charges in another way. A pepper-corn, or something not much more valuable, would necessarily be the annual reservation;

and the copyholder would thus be victimised in the shape of rent instead of fine. On coming, however, to the conclusion of your correspondent, "Fair Play's," letter, I discovered that the whole of his arguments were still further invalidated by his misapprehension of the premises on which they are built. He says that he finds "no difficulty in giving the leaseholder due control over the selection of the lives on which the copyhold is to be held," thus obviously confounding the case of the Kennington copyholds, which are of *inheritance* with that of a manor in which they are held only for *lives*, such an interest being of course peculiarly inapplicable and inconvenient for being moulded to the purposes of a building lease. The owners of such interests must, of course, deal with the difficulties inseparable from all merely life hold tenures, whether copyhold or ecclesiastical, in the best way they can.

Although I have trespassed upon your space at much greater length than I originally intended, I beg to suggest, before I conclude, a fair and equitable remedy for the chief grievance, the ruinous fine, of which the Kennington copyholders so justly complain. Looking impartially to *both sides* of the case and to the due protection of *every interest*, there can be no doubt, I think, that in assessing the fine, the lord may be entitled to tax the improved rent *before* it actually comes into the copyholder's possession, and that the real questions to be solved are, the period *when?* and to *what extent?* First, as to the period *when*—this is clearly not at or near the commencement of the demise, but when by the expiration of a considerable portion (say from two-thirds to three-fourths) of the term granted, the improved rent approaches so near to possession as to add to the copyholder's reversionary interest a marketable value, in addition to that of the ground-rent, but not a single day before. Next, as to the *extent*—clearly not to the full amount of such improved rent, it being still reversionary, but to the full amount of such marketable value, and not a single shilling beyond. We thus arrive at a simple, and at the same time fair and unobjectionable rule for computing the fine due to the lord. He is entitled to two years' rent of the land, as land, and to two years' ground-rent when built upon, being (at, say 2½ years' purchase), about *one-twelfth* of the entire inheritable value. As soon, however, as the copyholder's reversionary interest in the improved or rack-rent upon a building lease acquires any real value (which will generally be found to be after the expiration of about 50 out of 70 years), it becomes fairly liable to taxation in the same ratio. Add then, in the case of a fine payable on death, *one-twelfth* of such marketable value, as shown by the tables to the two years' ground-rent, or, in the case of alienation, take *one-twelfth* of the purchase price as representing the value of *both rents*; and *full justice* will manifestly be done both to the lord and to the copyholder, without troubling the

lessee or builder with what in no way concerns him. The lord who demands more than this does a palpable injustice to the copyholder, and the lord who takes less (as many do) takes less than he is fairly entitled to.

This I do not hesitate to state from my own knowledge, having had no inconsiderable experience in copyholds as steward for nearly half a century. R. L.

## SELECTIONS FROM CORRESPONDENCE.

### ANNUITY OR RENT-CHARGE.—FRANCHISE.

A., in 1820, grants his son, B., for B's life, an annuity or rent-charge of 42*l.* a year, issuing out of a freehold estate, which is duly registered with the clerk of the peace. A. dies, devising the freehold estate to B., in trust for sale. A., soon afterwards, sells and conveys the estate, without noticing the annuity, the existence of which did not at the time occur to B., nor was it specifically conveyed or accepted.

Under these circumstances, is B. now entitled to exercise his right of voting for representatives for the county? B.

### COMPULSORY ARBITRATION.

A Correspondent is informed that the Second Common Law Procedure Bill contains a clause enabling the Judges to order a reference of accounts before trial. We hope the Bill will pass.—ED. L. O.

### MORTGAGE BALANCE.

On the hearing of a claim for foreclosure, a decree is made for a sale, but the proceeds turn out to be insufficient to pay the mortgage money. Is the mortgagor discharged from the deficiency, or can the mortgagee recover of him the balance under the usual covenant for payment or otherwise? J. E.

### COURTS LECT.

I shall feel obliged by any of your readers informing me whether it has generally become the practice in manners to discontinue summoning the Court Lect. It would seem that the recent alterations in the law has scarcely left them anything to do. B.

### THE ABOLISHED COURTS OF REQUEST.

There cannot be a greater mistake than was made by a noble Lord when he stated that there was a denial of justice in the recovery of small debts anterior to the establishment of County Courts. Many small debt Courts existed to 8*l.*, 10*l.*, and 15*l.*, and the Court for Southwark and many of the parishes in Surrey, comprising a population of of 250,000 persons was much and very satisfactorily re-

sorted to. The Court sat regularly twice a week, and three Commissioners adjudicated on debts not exceeding 40*s.*, and five on debts of 5*l.* The business was done with dispatch and regularity, the High Bailiff of Southwark being the executive officer. Some hundred thousand cases were decided upon. The Commissioners comprised magistrates, solicitors, and those gentlemen who had filled the offices of churchwarden, overseer, &c.; and the business was done with much less inconvenience and loss of time to the public than in the much vaunted County Courts, and at very much less expense. C.

*Erratum.*—Page 227, *ante*, in the Letter of a Barrister on Copyhold Enfranchisement, in the last paragraph but one, for "subsides" read "absurdities."

## PROFESSIONAL LISTS.

### PERPETUAL COMMISSIONERS.

*Appointed under the Fines and Recoveries' Act, with dates when gazetted.*

Dalrymple, Arthur, Norwich, in and for the city of Norwich and county of the same city, also in and for the county of Norfolk. July 18.

Ball, Alfred, 59, Lincoln's Inn Fields, in and for the county of Middlesex, also in and for the city of London and the city and liberties of Westminster.

Frere, Bartle John Laurie, 6, New Square, Lincoln's Inn, in and for the county of Middlesex, also in and for the city of London and the city and liberties of Westminster.

Stephens, William, 30, Bedford Row, in and for the county of Middlesex, also in and for the city of London and the city and liberties of Westminster.

### COUNTRY COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

*Appointed under the 16 & 17 Vict. c. 78, with dates when gazetted.*

Dalton, John Edward, Leicester. July 21.

Field, Thomas Henry, Gosport. June 30.

Harrison, Robert Ovington, Sunderland. June 23.

Lyddon, Richard, Folkestone. June 30.

Marshall, Thomas, Sheffield. June 30.

Mawson, William Willmott, Manchester. June 23.

Millns, Adolphus Frederick, New Windsor. July 4.

Pattison, Samuel Houston, Great Coggeshall. July 14.

Pearse, Nicholas, Wiveliscombe. June 30.

Preston, Arthur, Norwich. June 20.

Wilkinson, Richard Reeves, Gosport. June 30.

#### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 20th June to 21st July, 1854, both inclusive, with dates when gazetted.

Bockett, Daniel Smith, and George Cowburn, 60, Lincoln's Inn Fields, Attorneys and Solicitors. July 14.

Browne, John, William Kingdon, James Smith Kingdon, and Francis Josiah Cotton, 10, King's Arms Yard, Moorgate Street, Attorneys and Solicitors (so far as regards the said John Browne). June 27.

Castle, Charles, Alfred Henderson, and Eustace Barham, Bristol, Attorneys, Solicitors, and Conveyancers (so far as regards the said Charles Castle). July 11.

Fisher, Thomas, and George Stone, Liverpool, Attorneys and Solicitors. July 4.

Hall, James Wallace Richard, and Henry, Minett, Ross, Attorneys and Solicitors. July 7.

Lees, Charles, and George Humble, Bradford, county of York, Attorneys and Solicitors. July 7.

Simcox, John, Thomas Simcox, and Edward Walford Simcox, Birmingham, Attorneys and Solicitors. July 18.

Straford, Joseph Cooper, and Hen. Plumbe, Cheltenham, Attorneys and Solicitors. July 18.

### NOTES OF THE WEEK.

#### AMENDMENTS IN THE BRIBERY BILL.

THE clause to which we lately called attention in this Bill, prohibiting attorneys from receiving any emolument for their services at the election of Members of Parliament, if they were electors, has been struck out. The clause in the amended Bill affecting professional men, as well as all others, is the 17th, under which all bills, charges, or claims, especially including "agents," are to be sent to the candidate within a month from the day of election, and by the 18th clause, the bills so received are to be sent by the candidate or his agent within three months to the election officer. Then by the 19th clause, no payments are to be made except through such officer.

#### ACKNOWLEDGMENTS OF DEEDS BY MARRIED WOMEN.

This Bill has been thrice reprinted with amendments. As passed in the House of Lords and now in the House of Commons, it will render valid all existing acknowledgments, taken *bona fide*, although one or both of the Commissioners may have been interested or concerned in the transaction, or attorney for one of the parties; but authorising the Court, where proceedings were instituted before the 13th July, to dispose of the same as if the Act had not passed, *except* that if the Court is satisfied that the parties have been induced by the rule of Hilary Term, 1834, to acknowledge deeds before Commissioners, one of whom may have been interested in the transaction, the Court may refuse to quash the certificate on such terms as to costs as may be thought fit. And the Common Pleas may make rules for preventing Commissioners who are interested from taking acknowledgments.

#### LAW APPOINTMENT.

The Queen has been pleased to appoint Henry Connor, Esq., to be Chief Justice of the Supreme Court of her Majesty's Ports and Settlements on the Gold Coast, and Assessor or Assistant to the native Sovereigns and Chiefs within the countries adjoining to the said Ports and Settlements.—From the *London Gazette* of July 25.

#### BANKRUPTCY BILL.

It is much to be regretted that new and important Bills should be introduced so late in the Session as to prevent the due consideration of their effect. This Bill was brought in the 30th June, and at first sight appeared to be unobjectionable; but, on further examination, it unnecessarily extends the powers of the *Official Assignees*, and continues the useless expense of *Brokers* in all cases, instead of combining (as the Commissioners recommend) the duties of the broker with those of the messenger. The professed object is to diminish expense, but we apprehend that this laudable end is, in many instances, lost sight of. Would it not be better to wait until a comprehensive measure can be prepared, in accordance with the Commissioners' report and of the evidence given by practical men regarding many defects not remedied in this Bill?

### RECENT DECISIONS IN THE SUPERIOR COURTS.

#### Lord Chancellor.

*Knowles v. Mount.* July 23, 1854.

SOLICITORS' COSTS. — ENTERING APPEARANCE WHEN MORE THAN THREE DEFENDANTS.

Held, *overruling the decision of Morritt v.*

*Walton* (ante, p. 169), that the Orders of October 23, 1852, directing the allowance of 6s. 8d. for every three appearances entered, only apply to matters in Judges' Chambers.

THIS was an application for a direction to the Taxing Master in this suit, in which there

were 46 defendants, as to the allowance for entering the appearance.

Speed in support.

The Lord Chancellor said, that in *Morritt v. Walton* (*ante*, p. 189), he had perhaps somewhat hastily decided there was no objection to the allowance of 6s. 8d. for every three appearances, whether on bill or claim, as on proceedings in Chambers, but upon referring to the preface of the Orders of October 23, 1852, it appeared they were confined to matters in the Judges' Chambers. Measures had been taken to remedy this, and an order was in preparation to meet the difficulty. This application would therefore stand over for a week.

### Lords Justices.

*In re M'Kenna, ex parte Hunt.* July 21, 1854.

**BANKRUPTCY.—TAXATION OF BILL OF ACCOUNTANTS FOR SELLING STOCK IN TRADE, &c.—JURISDICTION.**

*Semble, that the Lords Justices have not jurisdiction under the 12 & 13 Vict. c. 106, s. 12, to entertain the petition by way of appeal from the Commissioner taxing the bill of accountants, for selling by tender the stock-in-trade and premises of a bankrupt.*

THIS was a petition, by way of appeal from the decision of Mr. Commissioner Skirrow, taxing the bill of Messrs. Hunt, accountants, for selling by tender the stock-in-trade and premises of the bankrupt.

By the 12 & 13 Vict. c. 106, s. 12, it is enacted, that "the Court in the exercise of its primary jurisdiction by virtue of this Act, shall have superintendence and control in all matters of bankruptcy, and shall hear, determine, and make order in any matter of bankruptcy whatever, so far as the assignees are concerned, relating to the disposition of the estate and effects of the bankrupt," "and also in any matter of bankruptcy whatever, as between the assignees and any creditor or other person appearing and submitting to the jurisdiction of the Court," "and subject in all cases to an appeal," &c.

*Karslake* in support, referred to s. 83 of the former Act, 5 & 6 Vict. c. 122.

*Little* for the assignees.

The Lords Justices said, that the Statute conferred no jurisdiction in this case, and it appeared also, that this was the opinion of the Lord Chancellor in providing for this very matter by s. 16 of the new Bankruptcy Bill introduced this session. No order would therefore be made, but with liberty to the petitioners to apply to the Lord Chancellor.

*Freeman v. Freeman.* July 20, 22, 24, 1854.

**SUIT TO SUPPLY OMISSION OF TESTATOR TO SURRENDER COPYHOLDS TO USE OF WILL.—EFFECT OF SUBSEQUENT ON PRIOR WILL.**

*A testator, by his will, devised certain copyhold estates (inter alia) to his wife for life, with remainder on her death to his three younger children therein named, and by a subsequent will he gave to his wife for life all the stock, crop, and effects of his real and personal estate, and after her death he gave all his crop, property, personal estates, and effects, among his children (except his eldest son) living at his death. No surrender was made by the testator of the copyholds to the use of his will: Held, dismissing with costs an appeal from Vice-Chancellor Wood, that the copyholds passed under the first, and not under the second will; and that a surrender must be supplied in favour of the three children born at its date.*

THIS was an appeal from the decision of Vice-Chancellor Wood (reported 1 Kay, 479). The testator, Thomas Freeman, by his will, dated in June, 1804, devised certain copyholds, to the reversion in fee of which he was entitled, together with all other his freehold, leasehold, and copyhold estates, to his wife for life, with remainder to his three younger children, Thomas, John, and Eliza in fee, and bequeathed a sum of 10*l.* to his eldest son, Edward, as he was provided for. By a subsequent will, dated in August, 1807, and purporting to be his last will and testament, after reciting that his eldest son, Edward, would become upon his decease entitled to all his freehold estates, which would be an ample provision for him, he bequeathed all and singular the stock, crop, and effects, both real and personal estates, to his wife for life, and after her death all his crop, property, personal estates and effects, to all and every his child or children (except Edward) living at his decease, to be equally divided between them, share and share alike. It appeared that the testator had not surrendered the copyholds to the use of his will, and that there were two other children, Louisa and Mary Ann, born after the date of the first, but before that of the second will, who were all living at the testator's death in September, 1807. The copyholds fell into possession in October, 1851, and the assignees of his son John (the heir-at-law and customary heir of the eldest son, Edward, deceased) had brought an action to recover possession of the copyhold estates against the other son, Thomas, who thereupon filed this bill for an injunction and to have a surrender supplied in favour of the objects under the first will. The Vice-Chancellor having held that the copyholds passed under the first will, which was not revoked by the second, and that a surrender must be supplied in favour of the three children born at its date, this appeal was presented.

*W. M. James* and *Metcalf* for the plaintiffs; *Chandless* and *C. C. Berkeley* for the defendants; *W. Hisslop Clarke* for other parties.

The Lords Justices said, that the appeal must be dismissed, with costs.

**Master of the Rolls.**

Anon. July 8, 1854.

**PAYMENT OF DEPOSIT OUT OF COURT ON FAILURE OF UNDERTAKING. — CERTIFICATE OF CHAIRMAN OF HOUSE OF LORDS' COMMITTEES.—EVIDENCE.**

*Held, that the certificate of the chairman of the House of Lords' Committees, under the 9 & 10 Vict. c. 20, s. 5, cannot be received under the 8 & 9 Vict. c. 113, s. 1, on an application for the payment out of Court of the deposit, on the failure of the undertaking, without proof of the signature.*

THIS was an application, for a direction to the registrar to receive the certificate of the Chairman of Committees of the House of Lords, under the 9 & 10 Vict. c. 20, s. 5,<sup>1</sup> without proof of his signature, for the purpose of drawing up the order for paying out of Court the amount of deposit.

Lloyd in support, referred to 8 & 9 Vict. c. 113, s. 1, which enacts, that "whenever by any Act now in force or hereafter to be in force, any certificate, official or public document, or document or proceeding of any corporation or joint-stock or other company, or any certified copy of any document, bye-law, entry in any register or other book, or of any other proceeding, shall be receivable in evidence of any particular in any Court of justice, or before any legal tribunal, or either House of Parliament, or any Committee of either House, or in any judicial proceedings, the same shall respectively

<sup>1</sup> Which enacts, that if the petition or bill for the purpose of making or sanctioning any such work or undertaking "shall be rejected or finally withdrawn by some proceeding in either House of Parliament, or shall not be allowed to proceed, or if the person or persons by whom the said money was paid or security deposited shall have failed to present a petition, or if an Act be passed authorising the making of such work or undertaking, and if in any of the foregoing cases the person or persons named in such warrant or order," &c., "apply by petition to the Court in the name of whose Accountant-General the sum of money mentioned in such warrant or order shall have been paid," &c., "shall by order direct the sum of money paid in pursuance of such warrant or order," &c. "and the interest and dividends thereof to be paid or transferred to the party or parties so applying, or to any other person or persons whom they may appoint in that behalf;" &c., "upon the production of the certificate of the Chairman of Committees of the House of Lords with reference to any proceeding in the House of Lords, or of the Speaker of the House of Commons with reference to any proceeding in the House of Commons," &c., "which certificate the said Chairman or Speaker shall grant on the application in writing of the person or persons, or the majority of the persons named in such warrant, or the survivor or survivors of them."

be admitted in evidence, provided they respectively purport to be sealed or impressed with a stamp, or sealed and signed, or signed alone, as required," &c., "without any proof" "of the signature or of the official character of the person appearing to have signed the same, and without any further proof thereof, in every case in which the original record could have been received in evidence."

The Master of the Rolls said, that the Act did not apply to cases where the original document was produced, and that the signature must therefore be proved.

Roper v. Whieldon. July 20, 1854.

**CHARITABLE BEQUEST.—MISDESCRIPTION.**

*Bequest to the "Aged Needlewomen's Society." There were two societies with similar objects: the "Distressed Needlewomen's Home," and the "Distressed Needlewomen's Society:" Held, that the latter was entitled.*

THE testator, by his will, dated in September, 1852, gave a legacy of 400*l.* to the "Aged Needlewomen's Society." It appeared that there were two societies called the "Distressed Needlewomen's Society," and the "Distressed Needlewomen's Home," and which had both the same objects.

Forster for the latter society; Roupell, Berkeley, and Dawney, for other parties, were not called on.

The Master of the Rolls said, that the Distressed Needlewomen's Society was entitled.

Vice-Chancellor Kindersley.

Morritt v. Walton. July 19, 1854.

**SUBSTITUTED SERVICE ON DEFENDANTS OF ORDER TO REVIVE.**

*An order was made directing substituted service of an order to revive obtained under the 15 & 16 Vict. c. 86, s. 52, upon the death of the sole plaintiff, on the solicitors of the various defendants, who were very numerous and had appeared.*

THIS was a motion that the service of the order obtained under the 15 & 16 Vict. c. 86, s. 52, to revive this suit upon the death of the sole plaintiff might be substituted on the solicitors of the defendants, who were very numerous and had all appeared.

Tripp in support.

The Vice-Chancellor granted the application.

*Ex parte Governors of Oakham and Uppingham Grammar Schools.* July 21, 1854.

**RAILWAY COMPANY.—COSTS OF PETITION FOR PAYMENT OF DIVIDENDS ON PURCHASE-MONEY OF SCHOOL LANDS.**

*In the orders which had been obtained by the governors of a school for the investment in other lands of part of the purchase-money of school lands taken by a railway com-*

pany, no provision had been made for the payment of the future dividends: Held, that the company and the governors must each bear their own costs of a petition presented by the latter to obtain such payment.

THIS was a petition on behalf of the governors of the above school, part of the land belonging to which had been purchased by a railway company, for payment of the dividends on the purchase-money which had been invested. It appeared that in the orders for the purchase of other lands with part of the money which had been obtained provision had not been made for the payment of the future dividends.

Goren and H. R. Young in support; *Bovill* for the company, contra, as to costs.

The Vice-Chancellor said, that the omission had occurred through the oversight of both parties, and each must therefore bear his own costs of this petition.

*Streatfield v. Bedford.* July 24, 1854.

SUIT AGAINST TRUSTEE FOR ACCOUNT.—NEW TRUSTEES, APPOINTMENT OF.—COSTS.

*Where a suit was instituted for an account against a trustee on behalf of the next friend of an infant, and there was no previous application to the trustee: Held, that the trustee was entitled to deduct the amount of his costs out of the balance in his hands before paying it into Court.*

The bill also asked the appointment of new trustees, held, that the plaintiff was not entitled to costs, as he should have applied under the Trustees' Act, 1850.

IN this suit by the next friend of an infant, the devisee under a will, against the trustee for an account and for the appointment of new trustees, it appeared that no application for such account had been made before the bill was filed, and the defendant in his answer stated, that he was then and always had been ready to account and to hand over the balance to the guardians.

S. Smith for the plaintiff; *Glasse and Welford* for the defendant.

The Vice-Chancellor said, that as the trustee should have been applied to before proceedings were instituted, he would be entitled to deduct the amount of his costs out of the balance in his hands, which would have to be paid into Court. No costs would be allowed to the plaintiff, who should have applied by petition under the Trustees' Act, 1850, instead of by bill, for the appointment of new trustees.

Vice-Chancellor Stuart.

*Campbell v. Moxhay and another.* July 6, 1854.

FORECLOSURE CLAIM.—MOTION TO EXTEND TIME BY SECOND MORTGAGEE.

A decree for foreclosure was made on a claim by the first mortgagee against the mortgagor and second mortgagee, and a day was fixed with the consent of all parties: Held, that the second mortgagee could not apply to extend such day, and for a sale under the 15 & 16 Vict. c. 86, s. 48, where the first mortgagee did not consent, and his motion for such purpose was dismissed, with costs.

IN this foreclosure claim by the first mortgagee against the mortgagor and second mortgagee, the usual foreclosure decree had been made, and a certain day was fixed by the consent of all the parties for payment of the amount due, and in default for a foreclosure.

This motion was now made on behalf of the second mortgagee for the extension of the time within which the foreclosure would operate, and for a sale under the direction of the Court in pursuance of the 15 & 16 Vict. c. 86, s. 48.

Speed in support; *Cairns*, for the plaintiff, contra; *Druce* for the mortgagor.

The Vice-Chancellor said, that as the plaintiff did not consent, the motion must be dismissed, with costs.

Vice-Chancellor Wood.

*Wilde v. Murray.* July 6, 1854.

SECURITY FOR COSTS.—CROSS-BILL.—MIS-DESCRIPTION OF RESIDENCE.

*A motion was refused, but without costs, for an order on the plaintiff to give security for costs where he had described himself in the bill as of a house which was in the possession of a receiver appointed in a previous suit and let to another person, on the ground that the suit in question was in the nature of a cross-bill.*

THIS was a motion for an order on the plaintiff to give security for costs, on the ground that he was not residing at the house which he had given as his address in the bill. It appeared that a receiver had been appointed in a former suit against the present plaintiff, and that the house was let to another person.

Karslake in support; *Greene*, contra, on the ground that the present proceeding was in the nature of a cross-bill.

The Vice-Chancellor said, that it was the settled practice not to require security for costs from the plaintiff in a cross-bill, but that as he had described himself as of a house which at the time of filing the bill was actually let to another person, the motion would be refused, without costs.

*Chilwell v. Hocknell.* July 14, 1854.

ADMINISTRATION CLAIM.—COSTS OF AS-

<sup>1</sup> *Hurst v. Padwick*, 17 Law J., N. S., Ch. 169; *Watteu v. Billam*, 18 Law J., N. S., Ch. 455; *Vincent v. Hunter*, 5 Hare, 320.



# SIGNEES OF EXECUTOR AND RESIDUARY LEGATEE.

In an administration claim by an executor and a residuary legatee, his assignees were made defendants on his becoming insolvent: Held, that the plaintiff and his co-executor must have their costs as between solicitor and client, and the assignees as between party and party, out of the estate.

It appeared, in this administration claim, filed by an executor and a residuary legatee, that upon his becoming insolvent his assignees were made defendants, and the question now arose whether they were entitled to separate costs.

*Southgate* for the plaintiff; *Daniel and Rowpell* for the defendant and co-executor; *J. H. Palmer* for the assignees.

The Vice-Chancellor said, that the plaintiff and his co-executor must have their costs as between solicitor and client, and the assignees as between party and party, as they were necessarily brought before the Court.

*In re Deacon's Trust.* July 20, 1854.

## CHARITABLE BEQUEST. — MISDESCRIPTION OF OBJECT.

A testator gave a legacy to the "General Lying-in Hospital for Unmarried Females in London." It appeared there were two institutions for that purpose in London, but that one had been elsewhere mentioned in the will and provided for: Held, that the other was entitled to the legacy.

THE testator, Charles D. Deacon, by his will gave (*inter alia*) a legacy to the "General Lying-in Hospital for Unmarried Women in London." It appeared, on inquiries before the Chief Clerk, that there were two lying-in hospitals, viz., in the York Road, Lambeth, and Queen Charlotte's Hospital St. Marylebone. The Chief Clerk had certified in favour of the Lambeth institution.

*James, W. Hislop Clarke, and Dickinson* for the several parties.

The Vice-Chancellor said, that as the Hospital at St. Marylebone was mentioned and provided for elsewhere in the will, the testator must have intended the institution at Lambeth, which was therefore entitled to the legacy.

*Hill v. Jones.* July 22, 1854.

## CHARITABLE BEQUEST. — STATUTE OF MORTMAIN. — ESTABLISHING SCHOOL.

A testator directed a sum lent on railway debenture bonds to be brought into the funds, and part of the interest to be applied in repairing his tomb, and the remainder for charitable purposes as therein directed. He also directed that the income on a sum of stock should be applied to pay the master and mistress of a school which he wished to have established after his death, and that the principal should not be spent or reduced

for any purpose whatever. The will then proceeded:—"It was my intention to have left the house, blacksmith's shop, and premises for the purpose of being converted into a school-room, but I find that the law of mortmain prevents me, and that the heir-at-law would take it." He therefore gave the same to N., "in the hope he will convert it into a daily school." Held, that the bequest was valid, as the school might be established without purchasing land by hiring an existing house for the purpose.

THE testator, the Rev. Richard P. Jones, by his will, desired that 300*l.*, which he had lent on debenture to the Bristol and Gloucester and Birmingham Railway Company, should be brought into the funds, and that such part of the interest as might be required should be applied to keep his tomb in repair, and that the remainder of the annual interest should be given every year during the month of December in bread or blankets to any 12 of the most deserving agricultural labourers of the parish of Charfield, whom the rector for the time being should appoint. The will then proceeded:—"There are 4,000*l.* standing in my name in the 3 per cents., 2,000*l.* of which I bequeath to my wife absolutely, and 2,000*l.* I leave to pay a master and mistress of a school, which I wish to have established after my death for the children of the Established Church; the interest of this 2,000*l.* will give 60*l.* a year, and it is my wish that the principal may not be spent or reduced for any purpose whatever, and I leave the management of the school to be under the superintendence of the rector for the time being, and the rector's churchwarden. It was my intention to have left the house and blacksmith's shop, and premises, for the purpose of being converted into a school-room, but I find that the law of mortmain prevents me, and that the heir-at-law would take it. Under these circumstances, I therefore bequeath the house, blacksmith's shop, and premises occupied by Edward Hathaway to Mr. Joseph Neeld, of Guttleton, who is now patron of the living, in the hope that he will convert it into a daily school." The testator died in October last, having appointed his wife (the defendant) his sole executrix, and the question arose in this suit by the rector of the parish as to the validity of the bequest.

*G. M. Giffard* for the plaintiff; *Walford* for the defendant.

The following cases were cited — *Longstaff v. Rennison*, 1 Drewry, 28; *In re Clancy*, 16 Beav. 295; *In re Laugham's Will*, 1 Eq. Rep. 118; *Edwards v. Hall*, 1 Eq. Rep. 145.

The Vice-Chancellor said, that a school might be established without purchasing land, as an existing house might be hired for the purpose: *Attorney-General v. Williams*, 2 Cox, 387,<sup>1</sup> and that the bequest was therefore valid.

<sup>1</sup> Reported also 4 Bro. O. C. 526.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

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SATURDAY, AUGUST 5, 1854.
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### REMUNERATION OF SOLICITORS.

THE tide of public opinion has so strongly set in against the continuance of all proceedings which may be deemed useless or unnecessary, that we can scarcely expect the alterations will stop at the present curtailment of legal proceedings; nor can we shut our eyes to the fact, that in consequence of the remuneration for professional services being in a great measure dependent upon the length of documents, the pruning knife may be still further employed, with far more disastrous consequences to the practitioner than we have hitherto witnessed.

In these circumstances, no time should be lost by the Profession in taking into their serious consideration the best mode of guarding against the injurious consequences to which we have alluded. It will not be sufficient to wait in the hope of stemming the torrent when it comes. All attempts that may then be made will be attributed to self-interest, and the outcry will be raised that we are opposed to amendment because it will affect our own interests. The members of the Profession should boldly take the first step, and show to the Public that their only desire is to secure a fair remuneration for their services, and enable them to maintain their station in society as gentlemen, which by rank and education they are entitled to claim, and in the maintenance of which the Public are as much interested as themselves.

We would again, therefore, recommend that it be considered whether some rules could not be established for payment of professional services by a *per centage* on the amount claimed or recovered in all suits and actions in lieu of the present mode of remuneration. This proposition, on the

first impression, may appear startling and difficult, if not impracticable, to carry into effect; but the difficulties are greatly lessened by examination and reflection; and looking at the example of Scotland, India, and other parts, we need not despair of establishing a similar scale of allowance in this country, which will not only be advantageous to the Profession,—save infinite trouble in the details of bills of costs,—afford a just recompense to the solicitor, and be generally satisfactory to the public.

Of course the per centage would vary according to the amount sought to be recovered, and the nature of the duties to be performed; but it can scarcely admit of a question that a suitor would much more readily submit to the risk of a certain liability of five, ten, or more per cent., than be exposed to the possibility of having to pay double the sum sought to be recovered. It is suggested, that were this rule established, legal proceedings would be increased at least tenfold, and that had it been in operation, the outcry for the larger part of our modern Law Reforms could never have been raised. At all events, the constant apprehension to which the Profession is at present subjected from the incessant changes which are proposed, would be in a great degree removed.

Architects and engineers are paid by a per centage on the cost price of the works executed under their plans and superintendence, and no one questions the propriety of the rate at which they are remunerated for their skill and labour. For example, if the Temple Church, or Lincoln's Inn New Hall and Library, or the buildings of the Incorporated Law Society, cost 30,000*l.*, the payment of 5 per cent., or 1,500*l.*, on that large outlay would not be deemed extravagant; and yet how much better is an Archi-

tect remunerated than a Solicitor who investigates the title to, and prepares a conveyance of large property, or tries an action of great importance?

We are aware, however, that there may be suits or actions, or other professional business, in which the per centage rule cannot apply, because the question to be decided is not a pecuniary one, or only partially so. In such cases there should either be a special agreement, or the remuneration be regulated by the usual scale of a solicitor's charges; and to meet the objection that the client may not be able to ascertain the value of the services to be rendered, or may be unduly influenced by the solicitor, where such agreements are entered into, they may be subjected to the revision of a Taxing Master.

With the principal part of these suggestions, we have been favoured by a solicitor of much experience, and we trust they will be followed by other communications.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

17TH VICTORIA, 1854.

THE Acts of the present Session printed in the present Volume, with an Analysis to each, will be found at the following pages:—

Income Tax, cc. 17, 24, pp. 46, 134, *ante*.

Commons' Inclosure, c. 9, p. 64.

County Court Extension, c. 16, 121.

Registration of Bills of Sale, c. 36, p. 216.

Warwick Assizes, c. 35, p. 218.

Attendance of Witnesses, c. 34, p. 235.

### EVIDENCE IN ECCLESIASTICAL COURTS.

17 & 18 VICT. C. 47.

An Act to alter and improve the Mode of taking Evidence in the Ecclesiastical Courts of England and Wales. [24th July, 1854.]

Be it enacted, That in any suit or proceeding depending in any Ecclesiastical Court in England or Wales, the Court (if it shall think fit) may summon before it and examine or cause to be examined witnesses by word of mouth, and either before or after examination by deposition or affidavit; and notes of such evidence shall be taken down in writing by the Judge or registrar, or by such other person or persons, and in such manner, as the Judge of the Court shall direct.

### COMMONS INCLOSURE (NO. 2.)

17 & 18 VICT. C. 48.

An Act to authorise the Inclosure of certain Lands in pursuance of a Special Report of the Inclosure Commissioners for England and Wales. [24th July, 1854.]

Whereas the Inclosure Commissioners for England and Wales have, in pursuance of "The Acts for the Inclosure, Exchange, and Improvement of Land," issued their provisional orders for and concerning the proposed inclosures mentioned in the Schedule to this Act, and the requisite consents thereto have been given: And whereas the said Commissioners have by a special report certified their opinion that such proposed inclosures would be expedient; but the same cannot be proceeded with without the previous authority of Parliament: Be it enacted—

1. That the said several proposed inclosures mentioned in the Schedule to this Act be proceeded with.

2. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use either the expression "The Second Annual Inclosure Act, 1854," or "The Acts for the Inclosure, Exchange, and Improvement of Land."

### SCHEDULE TO WHICH THIS ACT REFERS.

| Inclosure.                                        | County.           | Date of Provisional Order. |
|---------------------------------------------------|-------------------|----------------------------|
| Queenborough Common . . .                         | Kent . . .        | April 4, 1850.             |
| Sutton . . .                                      | York . . .        | Dec. 22, 1853.             |
| Chalford . . .                                    | Oxford . . .      | Feb. 2, 1854.              |
| Wanwood Pasture . . .                             | Cumberland . . .  | July 22, 1853.             |
| Stanmore . . .                                    | Berks . . .       | Mar. 2, 1854.              |
| Buriton . . .                                     | Southampton . . . | Mar. 16, 1854.             |
| Snettisham Warren . . .                           | Norfolk . . .     | Mar. 16, 1854.             |
| Woodmancote . . .                                 | Gloucester . . .  | Mar. 30, 1854.             |
| Hatfield Forest . . .                             | Essex . . .       | April 6, 1854.             |
| Haverhill . . .                                   | Suffolk . . .     | April 6, 1854.             |
| South Weston, Wheatfield, and Stoke Talmage . . . | Oxford . . .      | June 23, 1853.             |
| Hutton . . .                                      | Somerset . . .    | May 4, 1854.               |
| Drungewick . . .                                  | Sussex . . .      | May 4, 1854.               |
| Benhill Wood . . .                                | Surrey . . .      | June 8, 1854.              |
| Cusop . . .                                       | Hereford . . .    | May 16, 1854.              |
| Elstead . . .                                     | Surrey . . .      | June 27, 1854.             |
| Gamblesby and Biglands . . .                      | Cumberland . . .  | June 26, 1854.             |
| Cove . . .                                        | Southampton . . . | May 25, 1854.              |

## ABOLITION OF CINQUE PORTS' JURISDICTION.

THIS Bill, which has been brought in by the Government, proposes to abolish the jurisdiction of the Lord Warden of the Cinque Ports, and the Constable of Dover Castle, in all civil suits and proceedings, both at law and in equity; and to provide

that after the 30th September next, all process and judgments shall be executed as in other parts of the respective counties of such Cinque Ports.

The parishes of Margate and other places, hitherto in the liberties of Dover, are to be severed therefrom, and form part of the county of Kent; and the towns of Winchelsea and Rye, are to form parts of their several counties.

The prisoners in the gaol of Dover Castle are to be removed to the county gaol on the 30th September, without writ of *habeas corpus*.

Thus, it appears, that the Government intend to put an end to the anomalous and peculiar jurisdiction of these old local Courts, which are obviously inconvenient in the general administration of justice, and to transfer the business to the ordinary Courts of the country. In like manner the Borough Court at Birmingham was lately abolished. These measures clearly indicate the general design of simplifying and rendering our system of judicature uniform.

Whether the County Palatine of Lancaster will form a permanent exception to the general rule, we know not. The Stannary Court of Cornwall may also, perhaps, be intended as another exception. These peculiar tribunals having distinct Judges and officers, and rules of practice, of course occasion additional expense, as well as interfere with the equal and uniform administration of the law.

## CHANCERY AMENDMENT BILL.

### ASSESSMENT OF DAMAGES.

SINCE we laid before our readers the first edition of this Bill (see *ante*, p. 198), by which it is proposed to empower the Court of Chancery to award damages in cases of breaches of covenant, &c., the following important provision has been added—enabling the Court to empanel juries and to compel the attendance of witnesses:—

“For the better assessing such damages, and for determining any question of fact that may arise in any cause or matter, it shall be lawful for the said Court (if it shall so think fit) to empanel juries and compel the attendance of witnesses, and for such purposes to exercise all the powers for compelling the attendance of jurors and witnesses which are now vested in any of her Majesty's Courts of Record at Westminster.”

It is also proposed that the powers given by the 15 & 16 Vict. c. 86, s. 63, of making general rules and orders shall extend to and include the summoning of jurors and witnesses, and the trial of issues of fact.

The commencement of the Act will be from and after the 1st day of November next.

## NOTICES OF NEW BOOKS.

*The Charitable Trusts' Act, 1853. The Orders, Regulations, and Instructions issued pursuant thereto; and a Selection of Schemes, with Notes, preceded by a Summary of the Law of Charities.* By OWEN DAVIES TUDOR, Esq., of the Middle Temple, Barrister-at-Law. London: William Henry Bond; Wildy & Sons; and William Amer. 1854. Pp. 302.

In this work Mr. Tudor has arranged the subjects treated of in the following order:—1st. What constitutes a charitable trust, and what under the 43 Eliz. c. 4, or otherwise, may be its objects. 2nd. What constitute superstitious as contra-distinguished from charitable uses. 3rd. What regulations the policy of the law prescribes for the validity of gifts to charitable uses by the 9 Geo. 2, c. 36. 4th. The jurisdiction over charitable trusts. 5th. The mode of procedure in cases of charitable trusts, both according to the old practice and under the Charitable Trusts' Act, 1853. 6th. The construction of gifts to charities, and the administration of their funds. 7th. The powers and duties of trustees of charities, and the extent of remedies in cases of breach of trust. 8th. The appointment and removal of trustees, schoolmasters, and others connected with charities. 9th. Fiscal regulations as to property given to charities.

In the Introduction to the Volume, Mr. Tudor remarks that charitable trusts present many anomalies when compared with other trusts:—

“None at first are more striking than the peculiar favour shown by the Court of Chancery in holding gifts to charitable purposes to be good, which had they been given upon ordinary trusts would have been void, either on account of the uncertainty or failure of the persons or objects for whom they were destined. Again, on the other hand, the mode in which the Legislature has interfered by 9 Geo. 2, c. 36 (commonly called the Statute of Mortmain), to prevent gifts to charities of anything savouring of realty except in the manner there prescribed; and the strict construction that Act

has received in our Courts of Justice, present a striking contrast to the favour which charities receive when the subject-matter of the gift consists of pure personality.

"It must however be remembered that the Law of Charitable Trusts, independent of that Statute, was principally moulded into shape by ecclesiastical tribunals, and that the Statute was the work of a Legislature in which the lay element predominates, and was intended to arrest what was declared to be a 'public mischief,' which 'had of late greatly increased, by many large and improvident alienations or dispositions, made by languishing and dying persons or others, to uses called charitable uses, to take place after their deaths, to the disherison of their lawful heirs.'"

Of a *superstitious* as distinguished from a *charitable* use, Mr. Tudor observes that the former has been defined generally to be—

"One which has for its object the propagation or the rites of a religion not tolerated by the law' (Boyle, 242). The Statutes relative to superstitious uses are, 23 Hen. 8, c. 10, 1 Ed. 6, c. 14, and 1 Geo. 1, c. 50, under which it has been decided, that bequests for establishing a Jesuit, or assembly for instructing the people in the Jewish religion (*Da Costa v. De Paas*, Amb. 228); for the maintenance of Roman Catholic monasteries or other establishments at home or abroad (*De Gracian v. Lawson*, 4 Ves. 433, n.); for the purpose of maintaining Roman Catholic priests (*Gates v. Jones*, cited 2 Vern. 266); to be applied to such purposes as a superior of a nunnery or her successor should judge most expedient (*Smart v. Prujean*, 6 Ves. 560), are void. So a bequest for masses, for prayers for a person's soul (*West v. Shuttleworth*, 2 M. & K. 684; *Attorney-General v. The Fishmongers' Company*, 2 Beav. 151; 5 M. & Cr. 11); for disseminating Roman Catholic doctrines, either for the education of the children of the poor (*Crofts v. Everts*, Mo. 784; *Attorney-General v. Power*, 1 Ball & B. 145; *Cary v. Abbot*, 7 Ves. 490); or for the purpose of maintaining a Roman Catholic priest (*The Attorney-General v. Todd*, 1 Keen, 803; and see *De Themmines v. De Bonzeval*, 5 Russ. 288), has been held void. However, by the Statute 3 & 4 Wm. 4, c. 115, which is retrospective (*Bradshaw v. Tasker*, 2 M. & K. 221), except as to suits previously commenced (*Attorney-General v. Todd*, 1 Keen, 803), persons professing the Roman Catholic religion are put upon the same footing with respect to their schools, places for religious worship, education, and charitable purposes, as Protestant Dissenters, subject however to the provisions of the Mortmain Act (9 Geo. 2, c. 36). This Statute, coming after the 10 Geo. 4, c. 7, which relieved the personal disabilities of Roman Catholics, has very materially altered the law upon this subject. Accordingly, it has been decided, that a legacy to be applied to the use of a Roman Catholic College (*Walsh v.*

*Gladstone*, 1 Ph. 290), and of Roman Catholic priests (*Attorney-General v. Gladstone*, 13 Sim. 7; 1 Ph. 290), is valid. And it has been held, that a bequest enabling people of the Jewish religion to observe its rites is good (*Strass v. Goldsmid*, 8 Sim. 614)."

It may be useful to place before our readers the summary given by Mr. Tudor of the *Mode of Procedure* under the new Act:—

"It has conferred on the Commissioners power to inquire into charities, to give advice to trustees seeking it, and to authorise the institution or compromise of proceedings which will, it is to be hoped, be most beneficially exercised in carrying out the intentions of the founders of charities in the mode most useful to the country at large. It has also provided a more economical forum when the funds of the charity are below a certain amount, and has done much to render proceedings in the Court of Chancery of a more summary and less expensive character." \* \* \* \*

"Power is given to the Board to inquire into charities in *England and Wales*, and to cause examinations and inquiries to be made by their inspectors together or separately, who are to report their proceedings to the Board (sec. 9); and the Board may require from trustees and others concerned therein, accounts and statements in writing in relation to any charity, and may also require such trustees and persons to return answers in writing to any questions or inquiries addressed to them by the direction of the Board (sec. 10). All officers having the custody of enrolments, decrees, etc., relating to any charity, are to furnish copies or extracts to the Board; and every inspector, secretary, and other officer of the Board, may search the registers and records of every Court, and every public registry and office of records and take copies and extracts therefrom without fee (sec. 11); and any inspector under the authority of the Board may, by precept, require the trustees of any charity, etc., to attend for examination, and to produce deeds, etc. and documents relating to the charity, and he may examine them upon oath, and all persons voluntarily attending before him (sec. 12), persons giving false evidence, are to be guilty of a misdemeanour (sec. 13); and any person who shall refuse or wilfully neglect to render to the Board any account or statement, or to answer questions and inquiries, or to attend any lawful precept of any inspector, or to give evidence before him, or shall wilfully alter, destroy, withhold, or refuse to produce any deed, etc., or document, is to be taken to have been guilty of a contempt of the High Court of Chancery (sec. 14). Neither the Board nor their inspectors are to have any power over persons holding or claiming to hold any property whatsoever adversely to the charity, or free or discharged from any charitable trust or charge (sec. 15).

"The Board is to receive and consider all applications for their opinion or advice respect-

ing any charity; and persons acting thereon will be indemnified against the retrospective effect of any judicial order, unless he has been guilty of fraud in obtaining such opinion or advice (sec. 16).

"Notice in writing of any proposed proceedings relative to charity, is to be transmitted to the Board, who may by certificate authorise the same, or such as they may think proper; and Courts are not to entertain proceedings as to charities, except upon and in conformity with the certificate (sec. 17). But the powers of the Attorney-General acting *ex officio* are not to be affected (sec. 18).

"Upon the report of an inspector, the Board may authorise proceedings where no notice had been given to them; and the Board may, before giving any opinion, or making an order or certificate after notice, cause local inquiries to be made by an inspector, and deposit his report for local inspection, and consider any objections thereto (sec. 19).

"The Board may certify cases to the Attorney-General, who may thereupon, if he think fit, institute legal proceedings in Chancery, or before a Judge at Chambers, or a District Court of Bankruptcy, or County Court under the Act (sec. 20).

"Authority is then given to the Board to sanction building, mining, or other leases; and improvements or alterations not permitted by the trust; and the application of the charity funds, or the raising of money by mortgage for those purposes (sec. 21). And the Board may empower trustees to remove any schoolmaster or other officer of any charity, and to charge the salary of his successor with a retiring pension, etc., but the consent in writing of a visitor, if there be one, is necessary (sec. 22). And the Board may sanction a compromise on behalf of a charity (sec. 23), and under special circumstances authorise a sale or exchange of charity lands (sec. 24), and may also authorise the redemption of rent-charges (sec. 25); and the leases, sales, exchanges, and other transactions authorised by the Board are to be valid, as if directed by express trusts (sec. 26). Moreover, trustees of charities are enabled to purchase sites for building, with or without garden, playground, or other appurtenances, from owners under disability, etc., according to the provisions of the Lands Clauses' Consolidation Act, 1845" (sec. 27).

In cases of charities the incomes of which exceed 30*l.*, the Master of the Rolls and Vice-Chancellors, upon application to them at Chambers, are to have the same jurisdiction as the Court of Chancery or Lord Chancellor intrusted with the care and commitment of lunatics:—

"Such applications, save as otherwise to be provided for by any rules, not to be subject to appeal where the gross income does not exceed 100*l.*; and the Master of the Rolls or Vice-Chancellors may direct an information, bill, or petition to be filed (sec. 28); and where the

gross annual income of charity in the County Palatine of Lancaster exceed 30*l.*, the Chancellor and Vice-Chancellor thereof to have the jurisdiction given to the Master of the Rolls and Vice-Chancellors sitting in Chambers (sec. 29). The provisions as to charities exceeding 30*l.* per annum to extend to charities in the city of London not exceeding 30*l.* (sec. 30); the Lord Chancellor, with the advice of the Master of the Rolls and Vice-Chancellors, or two of them, to make general orders regulating applications at Chambers" (sec. 31).

District Courts of Bankruptcy and County Courts are to have jurisdiction in cases of charities, the incomes of which do not exceed 30*l.* (sec. 32).

"But it is not to be exercised by a deputy sitting for a County Court Judge (sec. 33); and where two or more Courts have concurrent jurisdiction, the Board is to direct to which Court applications are to be made (sec. 34); and the Board may direct applications as to a charity within the jurisdiction of a District or County Court, to be taken before a Judge of the Court of Chancery or of the County Palatine, as if the gross annual income exceeded 30*l.* (sec. 35). No order of a District or County Court for the appointment or removal of trustees, or approval of a scheme, is to be valid unless confirmed by the Board (sec. 36); and the Board, if dissatisfied with the order of the District or County Court, may remit the case for reconsideration, or may transfer the matter to a Judge of the Court of Chancery or of the County Palatine of Lancaster, if within the jurisdiction (sec. 37), subject to any orders to be made by the Lord Chancellor; the orders of any District or County Courts under this Act are to be enforced as orders under its ordinary jurisdiction (sec. 38). The Board may, on application, authorise an appeal from order of District or County Court, and may require a bond as a security for costs, and the Attorney-General, acting *ex officio*, may appeal (sec. 39). Appeal may be brought by way of petition to the Court of Chancery, or to a Judge of the Court of Chancery, at Chambers; and in case a party allowed to appeal do not within three calendar months appeal, the order is to be final (sec. 40).

"The title to property as against any person claiming adversely to a charity, or the existence or extent of any charge or trust, is not to be tried under the Act (sec. 41).

"Notice is to be published of the applications for schemes, or the appointment or removal of trustees under this Act" (sec. 42).

The trustees of charities not exceeding 30*l.* per annum are yearly to send a statement of income and expenditure to the clerk of the County Court; above that sum to the clerk of the peace, and duplicates are to be forwarded to the Commissioners.

The second part of the work contains the Charitable Trusts' Act, 16 & 17 Vict. c.

137, the Orders of Court, a Schedule of Forms, and Practical Regulations.

■ The third part comprises schemes for carrying into effect various charitable trusts:—schools, hospitals, dispensaries, almshouses, &c., and to which are appended the Grammar School Act, the Lands' Clauses' Act, &c.

The Law relating to Charities is concisely, clearly, and accurately stated by Mr. Tudor, and his volume, with the instructions and regulations it contains, will be highly useful to practitioners and all who are engaged in charitable trusts and carrying into effect the provisions of the statute.

## LAW OF ATTORNEYS AND SOLICITORS.

### TAXATION OF BILL BY ONE TRUSTEE, WHERE JOINT RETAINER. — SPECIAL PETITION.

A SOLICITOR was jointly employed by two trustees, and upon one having gone to America, his co-trustee obtained an order of course for the taxation of the solicitor's bill of costs, submitting to pay what should appear due, but omitting all mention of the other trustee, and representing the solicitor was employed by himself.

The *Master of the Rolls* said: "There was a joint employment of a solicitor, and the application for taxation is made by one only. The Court, in such cases, has always considered it proper that a special application should be made. Subject to what I might hear on the other side, I should consider it would be very much of course to direct a taxation on the application of one, where the other could not, by reason of his absence, concur. The Court might consider the case in the same light as if there had been a refusal to concur.

"Here the application is made by one, without the concurrence of the other, in which case the Court has considered a special petition necessary. This is shown by the cases of *In re Chilcote*, 1 Beav. 421; *Lockhart v. Hardy*, 4 Beav. 224; *In re Hair*, 10 Beav. 187.

"In this state of circumstances, I must discharge the order, but without costs." *In re Lewin*, 16 Beav. 608.

## CONSOLIDATION OF THE STATUTE LAW.

A PARLIAMENTARY paper has just been printed relating to the Criminal Law Bills of the last Session of Parliament, comprising the remarks of Mr. Greaves, Q. C., and Mr. Lonsdale, the Secretary to the late Criminal Law Commission, in which they reply to the observations of the Judges. They say:—

"With regard to the consolidation of the Statute Criminal Law, the majority of the Judges either express opinions in its favour, or see no great objection to it, and therefore we need not offer any arguments in support of it. But we beg to call attention to one case, as a remarkable illustration of its extreme importance.

"In *Regina v. The Great Western Railway Company*, 3 Q. B. 333, the question was whether an inquisition taken in the borough of Reading, by a coroner for the borough, upon the body of a person who had been injured by an accident to a train in Sonning, in the county of Berks, and had died within the borough of the injuries he had received, was taken without jurisdiction. The case was argued before the Queen's Bench, and the Court, after taking time for consideration, delivered an elaborate judgment, in which, amongst other matters, they considered whether the 2 & 3 Edw. 6, c. 24, s. 2, gave the coroner jurisdiction, and held that it did not, as it only applied to the case where a *felony* had been committed, and to counties, and not to boroughs. Now the 2 & 3 Edw. 6, c. 24, was wholly repealed by the 7 Geo. 4, c. 64, s. 32. It is true that this was only one point in the case; but it is plain, that had a man been feloniously wounded in one county and died in another, the terms of the 2 & 3 Edw. 6, c. 24, would have expressly applied to the case, and a man might have been convicted of murder or manslaughter on an inquisition supposed to be properly taken under a Statute which had been repealed years before. This case is the more remarkable, because a case decided upon the provision in the 7 Geo. 4, c. 64, s. 12, substituted for that in the 2 & 3 Edw. 6, c. 24, was mentioned in the judgment of the Court.

"With regard to the consolidation of the unwritten law as to crimes, we at first thought of stating our own views upon that subject; but, upon looking into the Reports of the Criminal Law Commissioners, we feel that we shall pursue a better course by referring to those parts where the Commissioners have discussed the question, as well because they have expressed their opinions better than we might be able to express our own, as because what they have said will be entitled to greater weight than anything we might say. We beg, therefore, to refer to 1 Report, p. 2 to 9, inclusive, and p. 25 to 35, inclusive; 4 Rep. p. 5, *et seq.*; 7 Rep. p. 1 to 14, inclusive, of the

original Commissioners; and 2 Rep. p. 5 of the Revising Commissioners.

The learned gentlemen next consider it necessary to reply to some of the objections made by the Judges to the consolidation of the unwritten law relating to crimes.

"Before doing so, however, it seems to us to be by no means immaterial to call attention to the precise extent to which the Common Law would be repealed by these bills and statutory rules substituted for the same. By sect. 1 of Bill No. 1, no person is to be liable to indictment or criminal information in the name of the Queen, 'in respect of any offence against the person not included in this Act, or some Act not hereby repealed, or some Act to be passed after the passing of this Act.' It is manifest that this section does no more than incidentally repeal the Common Law definitions of the particular offences referred to, and in no way whatever extends beyond that limit. Now the only other section which repeals any Common Law rule is sect. 3, which repeals 'all rules of law contrary to the provisions of this Act relating to incapacity to commit offences, duress, criminal intention, and criminal agency and participation.' Consequently, all rules of the Common Law, other than such as are thus intended to be repealed, would still continue in force, and be applicable to the offences contained in these Bills, in like manner as they are now applicable to Common Law offences.

"The first objection to which we shall reply, is, to use the words of Mr. Baron Parke, 'the danger of confining provisions against crimes to statutory enactments, and repealing in this respect the rules of the Common Law, which are clear and well understood, and have the incalculable advantage of being capable of application to new combinations of circumstances perpetually occurring, which are decided, when they arise, by inference and analogy to them, and upon the principles upon which they rest.'

"This objection appears to be the principal one relied upon by the Judges: and it is not a little remarkable, that the very ground on which it is founded is put forward by the Commissioners as a very strong reason for the consolidation of the Common Law offences.

"They say (1 Rep. p. 25), 'However convenient the common or unwritten law may, in the opinion of some persons, be in its quality of flexibility and easy adaptation to all the varying exigencies of justice, so far as concerns mere civil rights, yet with respect to the criminal branch of the law these very qualities constitute an objection to the system. So long as a large proportion of penal law is merely oral, and dependent on the examination and construction of precedents, it must be, to the mass of society, inaccessible and unintelligible in its rules and boundaries.'

"When the law is to be extracted, as the unwritten or oral law must be, from a mass of precedents, it cannot possess the efficacy of written and certain rules and specific penalties in deterring men from the commission of crimes. For the law cannot be said to be promulgated till after the offence committed, where, previously, it cannot be known even to the most experienced lawyers, except by laborious research, and the aid of legal reasoning and analogy. We conceive that it will appear, from the digest and notes which we have given upon the subject of theft, that with regard to that offence at least, this inconvenience is, at present, very often practically felt.'

"And as the Common Law can, in many cases, only be known by the difficult and fallible process of extracting principles from precedents, and determining on the comparative weight of authorities where they conflict, so it will be collected from our preceding remarks, that the materials to which this process must be applied are but imperfectly known to the Profession, and are in a great measure inaccessible to the public.'

"And again the Commissioners observe, 'All the difficulties which we have pointed out as presenting themselves to the reduction of the Common Law to a more plain and certain form, afford arguments in favour of that reduction. The same difficulties which occur in framing consistent rules from the mass of authorities, are experienced in the practical administration of the law; and frequently, on occasions where there is little time for reflection in coming to a decision, few opportunities for revising it if erroneous, and no sufficient means of redressing the consequences of error.'

"The inconveniences arising from the administration of the oral law have, in particular instances, prevailed to such an extent as to make recourse to legislative aid absolutely necessary: and thus considerable portions of the Common Law have from time to time been declared, and the doubts, occasioned by conflicting cases, have been removed by the Statute Law, through the means of what are termed *declaratory Acts*. Whatever advantages have resulted where such interference has become necessary, will, it is apprehended, be experienced from the application of a similar remedy in numerous instances where it has not hitherto been applied.'—(1 Rep. 26, 27.)

"Nor does the matter end here. If every Common Law offence were known and fixed by certain rules, the objection of the Judges would be entitled to much greater weight; but when it is considered that there is hardly a single Common Law offence, the limits of which are known and fixed, either by definition or decision,<sup>1</sup> there is the danger that by

<sup>1</sup> Take as an example, theft, of which there are at least five or six different definitions, and none of them complete, as Mr. Baron Parke observed in *Reg. v. Holloway*, 1 D. C. C. 375."



applying the maxims and rules of the Common Law to new states of circumstances as they arise, though, 'done with the most pure and laudable intention, and with an earnest desire to punish the guilty, and to protect the interests of society,' the Common Law offences may be enlarged by construction so as to include cases to which their definitions did not originally apply. Upon this subject the Commissioners say in their Fourth Report, p. xiv.:

"Much uncertainty has arisen in the administration of our Criminal Law from the use of constructive extensions of Common Law definitions. Most of the definitions of the offences in the English Law are of great antiquity; and, having been adapted to times when it was more necessary to guard against force than fraud, have been found insufficient to meet the exigencies of a more civilised state of society, in which the means and opportunities, as well as the temptations, to commit fraudulent crimes, have increased with increasing civilisation. Finding the existing law, according to its obvious meaning, inadequate to the growing demands of criminal justice, *the Courts have from time to time, by their own authority, extended the boundaries of legal definitions by forced constructions*, and have thus brought within the scope of penal provisions predicaments to which they had never before been applied, and which had even been excluded in a former age by express decisions. Hence arose the doctrines of *constructive treasons*, of *constructive possession* in larceny, of *constructive breaking and entering* in burglary, of *constructive force*, and *constructive fear* in robbery, and many other subtleties and refinements of a similar nature. The extension of the penal law so as to comprehend those predicaments was reasonable and politic, but the mode of effecting it was liable to much objection. The practice amounted in effect to an exercise of the legislative functions by the Judges; and every such new decision beyond the strict limit of the ancient law was not only objectionable in subjecting the offender to a degree of punishment adapted to forcible outrages, where he had neither used nor contemplated violence, but also because every such instance of judicial interpretation constituted an *ex post facto law*. Independently of these objections, such extensions operated injuriously upon the law itself, by rendering it indistinct and uncertain,—the ancient boundaries being overthrown for the purpose of reaching flagrant offences not comprehended by them, without substituting such exact limits to the extended crimes as a correction by legislative interference would have prescribed."

These remarks, it is urged, will deserve the consideration of the Legislature, especially in reference to the following opinions of the Judges:—

"Mr. Justice Talfourd says, 'New forms of misdemeanor have repeatedly arisen, and have been punished by the application of the general principles of the Common Law. Within living memory forms of wrong, either singly adopted or devised in conspiracy, have been found criminally to impugn the rules of the unwritten law, and by the application of the principles of that law have been subjected to punishment; because those rules, not professing to define every mode of delinquency, are capable of just adaptation to the changing aspects of society,—to the new temptations which arise from new circumstances,—to the new modes of injury which new duties and new descriptions of property suggest, or to the new devices of evil which ancient wickedness may shape.'

"And Mr. Justice Crompton says, 'I think it unadvisable to lose the advantages of the power of applying the principles of the Common Law to new offences and combinations of circumstances, arising from time to time, which it is hardly possible that any codification, however able and complete, should effectually anticipate.'

"Two questions occur to us upon these observations. Is it their meaning that the definition of Common Law offences are clear and certain, and that the principles of the Common Law are only to be applied to new states of facts, in order to ascertain whether they amount to offences within the clear and certain definitions of the Common Law offences? Or is it their meaning that from time to time the essential ingredients of Common Law offences are to be reconsidered and determined according to the principles of the Common Law?

"If the latter be their meaning, we would very humbly ask whether this be not rather an encroachment on the functions of the Legislature. In the former, we would suggest that there is hardly a Common Law offence the limits of which are clearly ascertained; and certainly none so absolutely fixed as not to admit of being questioned whenever a novel case may arise,

"We would further add, that it is possible to conceive the occurrence of a case of such a nature as so to exasperate the feelings of the public that the Court may be placed in a very critical position if called upon to decide whether the facts amounted to an offence: in proof of this we need only mention the case of *Reg. v. S. and L. Abrook* tried at Hertford before Mr. Baron Alderson, and reported in 'The Times' of the 3rd June, 1854, where the prisoners were indicted for manslaughter, by starving their servant to death, and Mr. Baron Alderson is reported to have said, 'He did not quite concur in the decision that had been come to in a similar case in London; but there had been a great deal of sympathy created for the complaining party, and the consequence

was that there was a great deal of writing in the public journals respecting it, and this possibly had something to do with the result. He should, however, do his duty regardless of any observations that might be made respecting it. The learned Baron probably referred to Sloan's case.

"We would next observe that no rule, principle, or decision, as to Common Law offences, can be considered absolutely, and under all circumstances, binding on the Judges; and that there are some peculiarities with reference to criminal cases which do not apply to the general law. For example, many decisions in criminal cases have been made without argument, or after argument on one side only, and consequently are entitled to much less weight than if the cases had been fully argued. In some instances no reasons for the decisions have been reported: in others, contradictory or irreconcilable reports have been published. Again, all such decisions are but instances of the law as applicable to the particular facts of each case, and it is sometimes very difficult to determine whether the case is to be treated as laying down a rule, or only as an example of a more general rule.

"Another objection urged is, that new Statutes always give rise to numerous questions, which have to be decided upon a critical examination of the terms of the Statute alone:

"Mr. Justice Talfourd in proof of this refers to 'the Statute of Frauds, which, framed by one of the greatest lawyers that ever lived, has been the subject of almost numberless decisions.' We admit that a new Statute will, in all probability, lead to some new decisions; but a better proof that such Statutes may, nevertheless, be highly expedient cannot be given than is afforded by the Statute of Frauds itself, every line of which, Lord Northington used to say, was worth a subsidy.

"We cannot help also referring to Lord Campbell's Act for the Amendment of the Criminal Law, [14 & 15 Vict. c. 100], to parts of which some of the Judges are understood to have objected at least as strongly as to these Bills; for not only has that Statute not created the evils predicted, but it has almost wholly got rid of technical objections; very few questions have been raised upon it; and the only complaint made in respect of it has been that the provisions which were struck out in its course through Parliament did not become law."

"We would here also observe, that the strict examination of the Statutes which we

have been obliged to make in the course of preparing these and the seven other Bills which we have already completed, has drawn our attention to many most serious defects and imperfections in the statutory enactments relating to crimes, not only in the manner in which those enactments are framed, but also in their omitting many cases equally as deserving of punishment (and in many instances more so) as those against which they provide. In practice, however, these defects have not often been brought to light; which suggests the conclusion that it may be very possible for a Statute to have some defects in it, and yet in practice to work very well.

"It is also said that it is impracticable to reduce all the common law offences into a Statute, since no foresight can anticipate all circumstances that may arise.

"It may be remarked that the same objection applies equally to the Statute Law, for new circumstances (the creation of railways, for instance) may give rise to new states of facts which deserve punishment. But, assuming this to be correct as regards Common Law offences, we apprehend that the cases omitted will be extreme ones, and those very few, and probably of minor importance. And it may not be unworthy of notice, that although it is said to be a very bold thing to provide for all offences against the person, none of the learned Judges has pointed out a single offence against the person which is not provided for by the Bill relating to those offences.

"It is also worthy of remark that, by the course adopted by the Bills, no such omission can exist in many instances; for example, in those where, after specially providing for certain cases, a clause is added including all other cases of the like kind. To illustrate what we mean, we refer to sect. 107, which includes all attempts to murder, and sect. 120, all attempts to cause grievous bodily harm, other than those before provided for by special and particular enactments.

"Several of the Judges recommend that the Statutes should be consolidated, and new provisions added where deemed essential; and that where there are conflicting decisions, or the law is doubtful, the law should be settled by enactment.

"They therefore seem to admit that, in cases of difficulty and doubt, the Common Law offences might be made clear by statutory enactment. If their recommendation were followed in all cases where there is difficulty and doubt, few indeed would be the common law offences, the definition of which would not in part be contained in some Statute. Besides, if the Legislature is competent satisfactorily to remove such doubts and difficulties, we presume it must follow as a matter of course that it is equally competent to deal with cases in

\* "In *Reg. v. Sill* (1 Pearce C. C. R. 132), the Court of Queen's Bench expressed their regret that they were obliged to reverse a judgment against the defendant for obtaining property by false pretences, on the ground that it was not stated in the indictment to whom the property belonged. A clause rendering such statement unnecessary had been struck out of Lord Campbell's Bill."

which no such doubts or difficulties have arisen.

"With respect to the observations of Chief Justice Jervis, that 'It is very convenient for the draughtsmen to select subjects which require codification less than any other,—and which are comparatively easy, as specimens of what may be done upon the law at large,'

"We would remark that the Lord Chancellor and others well know how far the selection of these Bills was made by us; and as to the easiness of framing the first Bill, a very good opinion can be formed from the time spent by the Committee in considering it. In proof of the importance and difficulty of the subjects contained in these bills, we beg also to refer to the following statements of the Criminal Law Commissioners:—'We have made choice of this subject (theft), because we think that no other branch of the criminal law exhibits, in so remarkable a degree, the changes that the unwritten law has undergone, in consequence of its having been originally framed to meet less complicated circumstances, and having been afterwards adapted to the growing exigencies of society' (1 Rep. p. 4). 'If in addition to such difficulties, as to questions whether the owner of property retains any constructive possession at all, a number of intricate points with regard to the owner having at the same time, and with respect to the same property, a constructive possession as against one party, but no possession as against another, is considered, it must be admitted that there are few branches of the law in which the abstruseness and complexity of the subject present greater difficulties in the statement of precise, consistent, and intelligible rules,' than theft (1 Rep. pp. 8, 9). 'The difficulties peculiar to the Digest of Common Law crimes (arising principally from the vague, changing, and often conflicting authorities, from which the law is to be extracted) are far more formidable than those which attend the consolidation of the Statute Law. This remark particularly applies to the Common Law offences comprised under the general heads of Homicide and Criminal Violations of the Right of Property, including of course, in the latter, the crime of theft'" (4 Rep. p. 9).

## CONSTRUCTION OF STATUTES.

### EQUITY JURISDICTION IMPROVEMENT ACT.

#### SALE OF ESTATE BEFORE HEARING, UNDER s. 55.

IN *Prince v. Cooper*, 16 Beav. 546, the *Master of the Rolls*, in refusing an order before the hearing for the sale of an estate, under the 15 & 16 Vict. c. 86, s. 55, said: "The Act is intended to apply only to those cases, in which, for the protection of the property or

other like causes, it is necessary to come to the Court; but not to enable a party, in a contested suit, and upon an interlocutory application before the hearing of the cause, to obtain a decision upon the main questions at issue in it."

#### ENTERING APPEARANCE FOR PARTIES ADDED, UNDER s. 52.

Upon the bankruptcy of a principal defendant, his assignees were made parties by supplemental order, under the 15 & 16 Vict. c. 86, s. 52, but although served with the order they had not entered an appearance.

The *Master of the Rolls*, on motion, gave liberty to the plaintiff to enter an appearance for the assignees. *Cross v. Thomas*, 16 Beav. 592.

## PARLIAMENTARY RETURN.

### STATE OF BUSINESS IN THE OFFICES OF MASTERS IN CHANCERY.

THE following is the state of business in the Offices of the Masters in Chancery, collated from a return to the House of Lords, ordered to be printed 22d June last:—

#### *Sir George Rose:*

The number of causes and matters originally referred and now pending, exclusive of those in which nothing remains to be done, except passing receivers' accounts, is . . . 100

And the number in which nothing remains to be done in the office except passing receivers' accounts, is . . . 36

The number of causes and matters transferred and now pending, exclusive of those in which nothing remains to be done, except passing receivers' account, is as follows:

|                                  |    |
|----------------------------------|----|
| From Master Kindersley . . . . . | 7  |
| Farrer . . . . .                 | 13 |
| Brougham . . . . .               | 12 |
| Senior . . . . .                 | 17 |
| Sir Wm. Horne . . . . .          | 25 |
|                                  | —  |
|                                  | 74 |

And the number in which nothing remains to be done, except passing receivers' accounts, is . . . 63

The matters under the winding-up Acts originally referred, and now pending in the office, are . . . 13

And those transferred from the offices of Masters Kindersley, Farrer, Brougham, Senior, and Sir Wm. Horne, are . . . 9

The total number of causes and matters now depending in the office is therefore . 197

And of those in which nothing remains to be done, except passing receivers' accounts 99

#### *Richard Richards, Esq.:*

The number of causes and matters originally

referred, and now pending, exclusive of those in which nothing remains to be done, except passing receivers' accounts, is . . . 82

And the number in which nothing remains to be done in the office, except passing receivers' accounts, is . . . 45

The number of causes and matters transferred from the offices of Masters Kindersley, Farrer, Brougham, Senior, and Sir W. Horne, and now pending, exclusive of those in which nothing remains to be done, except passing receivers' accounts, is . . . 47

And the number in which nothing remains to be done, except passing receivers' accounts, is . . . 66

The matters under the winding-up Acts originally referred, and now pending in the office, are . . . 17

And those transferred from the offices of the Masters Farrer, Brougham, and Senior, are . . . 8

The total number of causes and matters now depending in the office, is, therefore . . . 154

And of those in which nothing remains to be done, except passing receivers' accounts, 111

*W. H. Tinney, Esq.:*

The number of causes and matters originally referred and now pending, exclusive of those in which nothing remains to be done, except passing receivers' accounts, is . . . 113

And the number in which nothing remains to be done in the office, except passing receivers' accounts, is . . . 52

The number of causes and matters transferred and now pending, exclusive of those in which nothing remains to be done, except passing receivers' accounts, is as follows :

|                             |    |
|-----------------------------|----|
| From Master Lynch . . . . . | 5  |
| Kindersley . . . . .        | 12 |
| Farrer . . . . .            | 17 |
| Brougham . . . . .          | 8  |
| Senior . . . . .            | 21 |
| Sir Wm. Horne . . . . .     | 33 |
|                             | 96 |

And the number in which nothing remains to be done, except passing receivers' accounts, is . . . 66

The matters under the winding-up Acts originally referred, and now pending in the office, are . . . 14

And those transferred from the offices of Masters Kindersley, Farrer, Brougham, Senior, and Sir W. Horne, are . . . 14

The total number of causes and matters now depending in the office, is, therefore . . . 237

And of those in which nothing remains to be done, except passing receivers' accounts, 118

*J. E. Blunt, Esq.:*

The number of causes and matters originally referred and now pending, exclusive of those in which nothing remains to be done, except passing receivers' accounts, is . . . 83

And the number in which nothing remains to be done in the office, except passing receivers' accounts, is . . . 56

The number of causes and matters trans-

ferred and now pending, exclusive of those in which nothing remains to be done, except passing receivers' accounts, is as follows :

|                                  |    |
|----------------------------------|----|
| From Master Kindersley . . . . . | 5  |
| Farrer . . . . .                 | 5  |
| Brougham . . . . .               | 7  |
| Senior . . . . .                 | 13 |
| Sir Wm. Horne . . . . .          | 19 |
|                                  | 49 |

And the number in which nothing remains to be done, except passing receivers' accounts, is . . . 66

The matters under the Winding-up Acts originally referred, and now pending in the office, are . . . 9

And those transferred from the offices of Masters Kindersley, Brougham, Senior, and Sir Wm. Horne, are . . . 7

The total number of causes and matters now depending in the office, is, therefore . . . 148

And of those in which nothing remains to be done, except passing receivers' accounts . . . 122

*Joseph Humphry, Esq.:*

The number of causes and matters originally referred and now pending, exclusive of those in which nothing remains to be done, except passing receivers' accounts, is . . . 133

And the number in which nothing remains to be done in the office, except passing receivers' accounts, is . . . 28

The number of causes and matters transferred and now pending, exclusive of those in which nothing remains to be done except passing receivers' accounts, is as follows :—

|                                  |     |
|----------------------------------|-----|
| From Master Kindersley . . . . . | 15  |
| Farrer . . . . .                 | 19  |
| Brougham . . . . .               | 12  |
| Senior . . . . .                 | 18  |
| Sir Wm. Horne . . . . .          | 46  |
|                                  | 110 |

And the number in which nothing remains to be done, except passing receivers' accounts, is . . . 34

The matters under the winding-up Acts originally referred and now pending in the office, are . . . 12

And those transferred from the offices of Masters Kindersley, Farrer, Brougham, Senior, and Sir Wm. Horne, are . . . 11

The total number of causes and matters now depending in the office, is, therefore . . . 266

And of those in which nothing remains to be done, except passing receivers' accounts . . . 62

*Summary :*

The total number of causes and matters now depending in the offices of the several Masters is as follows :—

|                                |       |
|--------------------------------|-------|
| Sir George Rose . . . . .      | 197   |
| Richard Richards, Esq. . . . . | 154   |
| W. H. Tinney, Esq. . . . .     | 237   |
| J. E. Blunt, Esq. . . . .      | 148   |
| Joseph Humphry, Esq. . . . .   | 266   |
|                                | 1,002 |

And of those in which nothing remains to be done, except passing receivers' accounts:—

|                            |     |
|----------------------------|-----|
| Sir George Rose . . .      | 99  |
| Richard Richards, Esq. . . | 111 |

|                          |           |
|--------------------------|-----------|
| W. H. Tinney, Esq. . .   | 118       |
| J. E. Blant, Esq. . .    | 122       |
| Joseph Humphry, Esq. . . | 62        |
|                          | <hr/> 512 |

## DIFFERENCES IN THE MERCANTILE LAWS OF ENGLAND, IRELAND, AND SCOTLAND.

### *England and Ireland.*

#### SALE OF GOODS.

##### *Constitution of Contract.*

1. No contract for the sale of goods, wares, or merchandize for the price of 10*l.* or upwards, is good without some note or memorandum in writing of the bargain be made and signed by the party to be charged by such contract or his agent.

Except there be delivery to, and acceptance by, the buyer of the whole or part.

Or the buyer give something in earnest to bind the bargain, or in part of payment of the price. 29 Car. 2, c. 3, s. 17 (England); 7 Wm. 3, c. 12, s. 13 (Ireland).

A bargain within either of the exceptions above-mentioned may be established by any legal evidence, except as to ships.

The Statute of Frauds applies, although the goods are not to be delivered till a future time, or are not made at the time of the contract, or some act is requisite for rendering the goods fit for delivery. 9 Geo. 4, c. 14, s. 7.

And it applies, although the goods were sold by public auction. *Kenworthy v. Schofield*, 2 B. & C. 945.

##### *Effect of Contract on Ownership.*

2. The property in specific goods ready for delivery passes to the buyer, on the making of the contract and before delivery.

Therefore the buyer is subject to the risk of accidents to the thing bought.

3. If credit be not stipulated for, or if a stipulated term of credit has expired, the seller may retain possession till the price be paid, but not for a general balance arising from other transactions.

4. If goods are sold on credit, and before delivery to the buyer, the seller sell them (otherwise than in market overt), and deliver them to a third party, the first buyer has a remedy for the goods or their value against such third party, whether he had or had not notice of the first sale.

##### *Purchaser's remedy against the Seller.*

5. The purchaser cannot, in general, enforce

### *Scotland.*

#### SALE OF GOODS.

##### *Constitution of Contract.*

1. A contract for the sale of any goods or other moveable (with the exception of ships), is effectual without writing.

Whether the goods are, or are not, manufactured or ready for delivery, or whether they are to be delivered immediately, or at a future day.

And whether the sale be by private bargain or public auction. And the contract may be established by parole or other legal evidence.

##### *Effect of Contract on Ownership.*

2. The property does not pass to the buyer until delivery.

Yet the buyer is subject to the risk of accidents to the thing bought from the date of the contract.

3. Though credit be stipulated for, the buyer has no property until delivery.

The seller may retain the goods, not only for the price, but also for a separate debt due to him by the vendee, and (it has been recently held that) he is entitled to do so, even against an onerous sub-vendee, and for a balance owing from the first vendee in respect to dealings after the second sale, and notice thereof to the first seller. *Melrose v. Hastie*, 13 Session Cases, 880; *M'Naughton v. Bairds*, 14 Session Cases, 1010.

4. If goods are sold on credit, and before delivery to the buyer the seller sell and deliver them to a third party, the first buyer has no remedy against such third party, unless he establish fraud or collusion.

##### *Purchaser's remedy against the Seller.*

5. The purchaser's remedy is to have imple-

*Purchaser's remedy against the Seller.*

delivery of the goods purchased specifically, and his remedy practically resolves itself into a claim for damages, whether he sues specially for non-performance of the contract, or brings an action of detinue for the goods themselves, or an action for the conversion of them.

*Seller's remedy against the Purchaser.*

6. When specific goods have been sold, the seller may sue the purchaser for the price.

When the sale is not of specific goods, the seller must sue on the contract for the damages actually sustained.

*Sale before Execution against Seller.*

7. After sale upon credit, and before delivery, the goods cannot be sold by the sheriff for the benefit of an execution creditor of the seller.

After sale, and before delivery, an execution creditor of the buyer may, as against creditors of the seller, have the things seized by the sheriff in the hands of the seller, and sold for the benefit of such creditor of the buyer, subject to the vendor's lien for the price, if unpaid.

It is otherwise in bankruptcy, where the goods are left in the order and disposition of the vendor, as apparent owner, and he is made a bankrupt. 12 & 13 Vict. c. 106, s. 125 (England); 6 Wm. 4, c. 14, s. 86 (Ireland).

*Sale after Execution against Seller.*

8. An execution creditor of the seller may have a sale for his benefit of all the seller's goods in the possession of the seller at the time of delivery of the writ to the sheriff, notwithstanding a subsequent sale to a *bond fide* purchaser, not in market overt. *Samuel v. Duke*, 3 M. & W. 622.

*Warranty.*

9. Under circumstances such as those stated on the other side, there is no implied warranty.

*Auction.*

10. The seller, without giving notice of his intention, may employ one person to make one or more biddings up to a fixed sum, to prevent the property being sold at an undervalue. *Flint v. Woodin*, 9 Har. 618.

*Measure of damages for non-fulfilment of Contract by Seller to deliver.*

11. The value of the thing bought at the time at which the delivery should have taken place can, in general, alone be regarded, and the purchaser is not entitled to compensation

*Purchaser's remedy against the Seller.*

ment of the contract by delivery of the goods, and damages for withholding delivery. If specific goods are sold, and in the possession of the vendor, the vendee may bring an action *ad factum præstandum* to enforce delivery.

But not if the vendor has become bankrupt; and in that case the vendee's claim resolves into a personal demand for damages, and he will be ranked along with other personal creditors on the bankrupt estate.

*Seller's remedy against the Purchaser.*

6. The seller may sue the purchaser for the price and interest, whether the goods sold are specific or not, provided goods according to the contract have been tendered to the purchaser.

*Sale before Diligence against Seller.*

7. After contract of sale and before delivery, whether the goods have or have not been paid for by the buyer, they may be taken in execution by a creditor of the seller, and such diligence gives the creditor a right to have the goods sold for his benefit.

If the seller becomes bankrupt before delivery, the goods belong to the trustee for the general body of the seller's creditors, and the buyer is merely a creditor for the price, or so much of it as he may have advanced, and for damages, in so far as he may have sustained loss by not having implement of the contract.

*Sale after Diligence against Seller.*

8. The issuing of a precept of poinding and the execution of a charge for payment, until followed by an execution of poinding, do not prevent a sale of goods by the debtor.

*Warranty.*

9. There is an implied warranty on the part of the seller, that the thing sold will be fit for the purposes for which the seller knows that it was bought, even against defects unknown to the seller, and when the purchaser has had a full opportunity of inspecting the thing. 1 Bell's Comm. 438.

*Auction.*

10. The seller must give notice of his intention to employ a person to bid on his behalf.

*Measure of damages for non-fulfilment of Contract by Seller to deliver.*

11. The value of the thing between the time at which the delivery should have taken place, and the time of trial may, in general, be taken into consideration in assessing the compensation.

*Measure of damages for non-fulfilment of Contract by Seller to deliver.*

with reference to a subsequent rise in the value. *Shaw v. Holland*, 15 M. & W. 136; *Westropp v. Solomon*, 8 C. B. 345. See p. 373.

#### *Distress.*

12. Landlord's right of distress attaches only after the rent has become due.

#### *Sale of Stolen Goods.*

13. Sale in market overt of stolen goods gives the purchaser an absolute right against the true owner, until the latter has prosecuted the thief to conviction.

#### *Payment of Price.*

14. May be proved by oral evidence only.

*Measure of damages for non-fulfilment of Contract by Seller to deliver.*

tion to the purchaser. *Dunlop v. Higgins*, 6 Bell's App. 195; 1 H. L. C. 381.

#### *Hypothec.*

12. Landlord's right of hypothec affects the property of the tenant, not only for rent which has become due, but for that which is accruing due.

#### *Sale of Stolen Goods.*

13. No purchaser of stolen goods can acquire an absolute right to them against the true owner.

#### *Payment of Price.*

14. There must be written evidence of payment, unless in the case of a ready-money transaction, where payment is part of the *res gestæ*, or the whole sum is under 100*l.* Scots (8*l.* 6*s.* 8*d.*)

## ENFRANCHISEMENT OF COPYHOLDS.

### MANOR OF KENNINGTON.

*To the Editor of the Legal Observer.*

SIR,—Having only just seen the letter of "R. L." in the last Number of the *Legal Observer*, I am obliged to reply to it as briefly as possible, in order to have a chance of my reply appearing in your next Number.

The main question is, whether the copyholders attempt to deprive the lord of a portion of the rights to which he is entitled—it not being disputed that the copyholders took their property subject to the lord's rights, and that they had ample means of knowing the extent of such rights.

It appears from the petition, and from "R. L.'s" letter, that the copyholders seek to regulate the amount of the lord's fines, by the rent paid to the copyholder, and not by the value of the property at the time the fines become payable.

Now, if the lord be entitled to the ordinary fine of two years' improved value, and the rent is as stated, materially less than the improved value; the object of the copyholders, if attained, would deprive the lord of a material portion of his rights.

If the lord be not so entitled, the remedy of the copyholders is very simple. Let them refuse to pay the fines based on the improved value and tender the fines on what they contend is the just estimate; and if the lord be not entitled to the larger fines, his claim will be unsuccessful.

On the other hand, if the lord be so entitled, it appears to be clearly unjust, as a matter of business, to require him to accept less than the value of his interest, because the copyholder has chosen to deal with his own interest in the property, as if that of the lord had not existed;

and thus obtained, as even admitted by "R. L.," a far different rent than that which would have been paid, had he granted a lease subject to the lord's rights.

"R. L." seems to think that a lease granted subject to such rights, would not be taken by a builder; but, with most men of business, no difficulty would arise, as it would be easy to calculate the expense of effecting an insurance to cover the expense of admission, after the land was built on; and the builder, with such a contract, instead of getting a worse, might, and probably would, get a better bargain.

To take the case mentioned by "R. L.," of land worth 1*l.* a year, and when built on worth 100*l.* a year.

If the life on the rolls was young, an insurance might be effected on that life, or as the fine on admission of two lives would be but 3*l.*, or of three lives but 3*l.* 10*s.*, and the expense of admission to the land would be but trifling, a surrender might be made to trustees, and a policy assuring 200*l.* for the fine, effected payable on the death of the longer or longest liver.

The annual premium would be but small, but would of course reduce the rent payable to the copyholder by its amount, as with justice it should do, as he would have no more right to a rent arising in respect of the lord's interest, than a leaseholder would have to expect the full value of the property without paying the ground rent.

The matter stands simply thus:—A. and B. have separate interests in property; each has a right to do what he pleases with his own interest, but not to affect that of the other party, and if it be desirable that B. should have the power to enfranchise his interest from the claim of A., he ought to pay the value of A.'s interest.

Should that interest operate so as to cause B. a greater loss than the actual value of A.'s

interest, so far from its being an argument that *B.* should pay less than the actual value to *A.*, it would, in the minds of most men, and especially of gentlemen of 50 years' practice in the law, be rather an argument for *A.* requiring somewhat more than the actual value of his interest, rather than that *B.* should purchase it for less than the actual value.

My acquaintance with copyholds has not extended to nearly half a century, but has exceeded thirty years, and I must tell "R. L." that I know the difference between copyholds of inheritance and copyholds for lives, and that he is mistaken in supposing that I referred to the latter.

It is clear from his remarks as to life interests, and the alleged difficulty of arrangements between a builder and copyholder, so as to preserve the lord's rights, that he has paid but little attention to mathematical questions in relation to partial interests in property, which in questions between lord and copyholder, are fully as important as the mere legal consideration of the matter.

I hope that if "R. L." should again write to the *Legal Observer*, he will write in good humour, and if so I will take care to do the same.

Aug. 2, 1854.

FAIR PLAY.

## SELECTIONS FROM CORRESPONDENCE.

### UNPOPULARITY OF ATTORNEYS.

It cannot be denied that there is a general prejudice in the public mind against attorneys. The disreputable attorneys are so few that they cannot by their malpractices create it. Whence then does it arise? This is the true source:—The plaintiff and defendant are, of course, enemies, and they consequently denounce each other's attorney as a rogue, and ready to prosecute and defend any injustice. The plaintiff says the defendant and his attorney are rogues for resisting his just demand; and the defendant and his attorney say that the plaintiff and his attorney are great rogues for prosecuting so iniquitous a demand.

H.

### CORPORATION LAND.—DISSOLUTION.

*A.* conveys freeholds to the use of a corporation. The corporation is dissolved. To whom, in that event, does the land belong?

DELTA.

### LEASES OF COPYHOLD LAND.—LICENCE.—FINE.

The Legislature has from time to time done much to give efficacy to the right of a copyholder to deal with his copyhold as he may think fit, but much remains to be done without any injury to the rights of the lord. I would instance a case of great hardship. The

copyholder grants a building lease for a term of say 71 years, in a case where the licence to demise only enables him to grant for 70. In another case, the tenant inadvertently grants a building lease for the term of 70 years, when in fact 20 years of that term, as limited by the licence, has expired. In both cases, it is contended on behalf of the lord that the leases are void, and that the lord is entitled to fines computed on the full rack-rent—to the entire destruction of the property of the copyholder. Would it not therefore be right to abolish the necessity for such licences to demise without prejudice to the lord's compensation for granting them, and to enact that, notwithstanding the irregularity, the leases shall be valid, and that the lord shall only be entitled to fines calculated on the actual ground-rent, provided that rent was a *bond fide* one, and such as could be reasonably obtained at the time of letting the land? Without some such enactment, it is difficult to see how the copyholder can be considered as the owner of his own property.

How much useless and ruinous litigation would have been spared, is manifested in the report of the case of *Freeman v. Freeman*, before the Lords Justices, had the absurd restriction as to the necessity of surrendering copyholds to the use of a will been abolished at the time of the devise in that case in 1807. Fortunately, by the Act of 1815, a copyholder can now devise his copyholds without a previous surrender. ONE, &c.

### THE LAW UNION INSURANCE COMPANY.

This office has met with its first loss in the recent city fire. Such of your subscribers as are shareholders in the Law Union will be glad to learn that the total loss to that office does not exceed 50*l.* D.

### UNQUALIFIED CONVEYANCERS.

A Correspondent is informed that the 44 Geo. 3, c. 98, s. 14, prohibits all persons from preparing conveyances or deeds relating to any real or personal estate, other than barristers, solicitors, attorneys, *notaries*, or proctors, having obtained regular certificates, and special pleaders, draftsmen in equity, and *conveyancers*, being members of one of the four Inns of Court and having taken out certificates. The person referred to does not appear to be liable to any penalty.

### LEGAL HALF-HOLIDAY ON SATURDAYS.

A memorial signed by 234 of the principal firms of solicitors in London, has been presented to the Council of the Incorporated Law Society,—suggesting an application to the Judges to sanction the closing of all legal business at two o'clock on Saturdays. The Council concur in the propriety of the suggestion, and will take steps for carrying it into effect. E. L. O.



## ATTORNEYS TO BE ADMITTED.

Michaelmas Term, 1854.

Queen's Bench.

## Clerks' Names and Residences.

## To whom Articled, Assigned, &amp;c.

|                                                                                                           |                                                                                         |
|-----------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| Armstrong, James, 61, Herbert-street, Hoxton ;<br>and Newcastle-upon-Tyne . . . . .                       | W. Chater, Newcastle-upon-Tyne                                                          |
| Atchison, John Simons, Walthamstow . . . . .                                                              | F. M. Selwyn, Temple ; E. Clowes, Temple                                                |
| Ayckbourn, Hubert, 15, Webb's County-terrace,<br>New Kent-road ; and Trinity-terrace . . . . .            | E. Hodgkinson, Little Tower-street                                                      |
| Baldwin, Robert Bulkeley, 25, Arundel-street,<br>Strand ; and Leyland, near Preston . . . . .             | W. Charnley, Preston                                                                    |
| Barnett, Horatio Frederick, 10, Lower Calthorpe-<br>street ; and Walsall . . . . .                        | T. Marlow, Walsall ; W. Beale, Maidstone<br>Barnett, Walsall                            |
| Bartleet, William Smith, Stourbridge . . . . .                                                            | Messrs. Vernon and Minshall, Bromsgrove                                                 |
| Barber, George Henley, 1, Gray's-inn-square ; and<br>Streatham . . . . .                                  | H. Mason, Basinghall-street                                                             |
| Bassett, James, 10, Warwick-court, Gray's-inn ;<br>Trafalgar-road ; and Rochester . . . . .               | R. Prall, Rochester                                                                     |
| Batchelor, George Beetham, 113, New Bond-st. . . . .                                                      | J. E. Wilson, Cranbrook                                                                 |
| Bayley, John Tandy, 7, Soley-ter., Myddleton-sq. . . . .                                                  | W. O. Tucker, Threadneedle-st. ; W. . . . .<br>St. Swithin's-lane                       |
| Bell, Edward Samuel, Stockwell-green . . . . .                                                            | F. Smith, Basinghall-st. ; J. Croft, Basinghall-st.                                     |
| Beynon, Thomas, Carmarthen . . . . .                                                                      | R. Rees, Carmarthen ; S. B. Edwards, Carmarthen                                         |
| Bridger, William, 18, Southampton-st., Pentonville . . . . .                                              | B. J. L. Frere, Lincoln's Inn                                                           |
| Burdekin, Benjamin, jun., 8, Storr-st., Bedford-sq. . . . .                                               | A. Smith, Sheffield                                                                     |
| Barton, Henry Augustus, 2, Regent-place, West,<br>Regent-square ; and Lincoln . . . . .                   | F. Burton, Lincoln ; J. L. Syme, Funiyal's Inn                                          |
| Cayley, George, 16, Albert-ter. ; Great Ormond-<br>street ; Great James-st. ; Stamford ; Putney . . . . . | C. Lever, Frederick's-place                                                             |
| Cheadle, George, 4, Lower Calthorpe-st., Gray's-<br>inn-road . . . . .                                    | G. T. Taylor, Featherstone-buildings                                                    |
| Chorley, Thos. Fearncombe, 9, Cottage-pl., City-<br>road ; and Taunton . . . . .                          | F. A. Trenchard, Taunton                                                                |
| Cobb, Wm. Henry, 1, Gordon-place, Tavistock-<br>square ; and York . . . . .                               | H. Richardson, York                                                                     |
| Coode, Frederick, 20, Chadwell-st., Myddleton-<br>square ; and Launceston . . . . .                       | G. G. White, Launceston                                                                 |
| Coulcher, Cooper, 5, Albert-terrace, Islington ;<br>Swinton-street ; and Ely . . . . .                    | M. Coulcher, Downham-market ; G. Platten,<br>King's Lynn ; F. R. Partridge, King's Lynn |
| Cousins, Thomas, jun., Portsea . . . . .                                                                  | J. C. Parnell, Portsea                                                                  |
| Cowburn, William Brett, Sydenham . . . . .                                                                | W. Cowburn, Lincoln's-inn-fields ; M. Tatham,<br>Lincoln's-inn-fields                   |
| Craven, Abraham, 12, Compton-st. East, Bruns-<br>wick-square ; and York . . . . .                         | E. Peters, York                                                                         |
| Crawford, Thomas, North Shields . . . . .                                                                 | T. C. Lietch, North Shields                                                             |
| Dickin, Thomas Parkes, Ludlow ; and Bilston . . . . .                                                     | W. Owen, Wem                                                                            |
| Drabwell, John, 38, Edward-street, Hampstead-<br>road ; and Huddersfield . . . . .                        | J. C. Laycock, Huddersfield                                                             |
| Druce, Henry, 5, Mecklenburgh-street ; Hunter-<br>street ; and Tenbury . . . . .                          | W. Adams, Tenbury ; W. Morris, Tenbury                                                  |
| Edwards, Charles Hugh, Birmingham . . . . .                                                               | T. E. Lee, Birmingham ; C. Best, Birmingham                                             |
| Elgood, William, 97, Wimpole-street ; John-st. ;<br>and Newport . . . . .                                 | J. H. Hearn, Newport                                                                    |
| Emmet, Charles, Halifax . . . . .                                                                         | T. Adam, Halifax                                                                        |
| Falcon, Michael, 41, Bedford-row ; Wirkington ;<br>and Shrewsbury . . . . .                               | W. W. How, Shrewsbury ; C. Falcon, Liverpool                                            |
| Farnfield, William, Woolwich . . . . .                                                                    | G. Fry, Mark-lane                                                                       |
| Fellows, Arthur, Hampstead ; Park-ter. ; Guild-<br>ford-street ; and Wolverhampton . . . . .              | J. Hawksford, Wolverhampton                                                             |
| Fisher, Thomas, The Rectory, Higham ; and<br>Ashby-de-la-Zouch . . . . .                                  | E. Fisher, Ashby-de-la-Zouch ; F. J. Wood,<br>Hinckley                                  |
| French, Beal Frederick, Stepney-green . . . . .                                                           | G. Marten, Mincing-lane                                                                 |
| Fryer, William Henry, B.A., Coleford . . . . .                                                            | H. H. Fryer, Coleford ; C. B. Dryden, Lincoln's-<br>inn-fields                          |
| Gamble, George, jun., 35, Regent's-circus ; and<br>Carlisle . . . . .                                     | T. H. Hodgson, Carlisle                                                                 |
| Gardener, Richard, 4, Cloudeley-square, Isling-<br>ton ; and Banbury . . . . .                            | B. W. Aplin, Banbury ; H. Parker, jun., Bedford-<br>row                                 |
| Gaskell, Samuel, 35, Islington-terrace ; Park-road ;<br>and Wigan . . . . .                               | E. Leigh, Wigan                                                                         |
| Greatback, Frederick Daniel, 2, Crescent-place,<br>Mornington-crescent . . . . .                          | J. Tepper, Great James-street                                                           |

*Clerks' Names and Residences.*

*To whom Articled, Assigned, &c.*

|                                                                                            |                                                            |
|--------------------------------------------------------------------------------------------|------------------------------------------------------------|
| Greenway, Kelynge, jun., 2, Percy-circus, Pentonville; 39, Lincoln's-inn-fields; Warwick   | G. C. Greenway, Warwick; J. Smith, Warwick                 |
| Grenfell, George Pascoe, 12, Albion-terrace, Islington; and Penzance                       | W. Boriase, Penzance                                       |
| Grimmer, William Henry, 129, Tachbrook-st., Pimlico; and Bradford                          | M. Foster, Bradford; J. Swithinbank, Leeds.                |
| Grimshaw, John, jun., 4, Lower Calthorpe-street, Gray's-inn-road; Heathcote-st.; and Colne | H. W. Hartley, Colne                                       |
| Groom, Alfred, 1, Alwyne-villas, Canonbury                                                 | G. Powell, 3, Raymond-buildings                            |
| Hackwood, William, 16, Cottage-grove, Mile-end                                             | J. Linklater, Size-lane                                    |
| Hall, Henry, Ashton-under-Lyne; and Leamington                                             | J. Richmond, Ashton-under-Lyne                             |
| Hellins, Wm., 27, Mornington-road; and North Tawton; Pilgrim-street; and Albion-terrace    | R. Fulford, Exeter                                         |
| Hewitt, Robert Henry, 36, Trevor-square, Brompton; and Norwich                             | R. Hewitt, Northampton; Sir William Foster, Bart., Norwich |
| Hill, William James, jun., 4, Upper Chadwell-st., Pentonville; and Melcombe Regis          | J. Garland, Dorchester                                     |
| Hill, John Edwards, Halifax                                                                | G. Edwards, Halifax                                        |
| Hirtzel, George, 20, Doddington-grove, Kennington-road; and Exeter                         | J. Daw, Exeter; J. S. Kingdon, King's-arms-yard            |
| Hitchings, Richard Neville, 31, Bloomsbury-st., Bedford-square; and Wroughton              | J. James, Wroughton                                        |
| Hole, Charles Marshall, 9, Powis-place, Great Ormond-street; and Cowley, near Uxbridge     | C. H. Rhodes, Chancery-lane                                |
| Hough, William Henry, 20, Argyle-sq., King's-cross; Amersham                               | H. Hough, Oakham; F. Charaley, Amersham                    |
| Hughes, Charles Leadbitter, Newark-upon-Trent                                              | P. R. Falkner, Newark-upon-Trent                           |
| Irvine, A. Ledwick, jun., 5, Baggreen-lodge, New Peckham                                   | J. Atkins, White-hart-court                                |
| Jenning, Thomas Amas, 25, Gloucester-gardens, Paddington; and Stockton-upon-Tees           | J. R. Wilson, Stockton-upon-Tees                           |
| Joslen, Arthur, 12, Soley-terrace, Lloyd-square; and Maidstone                             | K. King, Maidstone                                         |
| Julius, Edric Adolphus, 22, St. Paul's-road, Camden-town                                   | J. Marsden, Wakefield                                      |
| King, Robt., 10, Frederick's-pl., Mile-end-road                                            | L. Hicks, Gray's-inn-square                                |
| Kianeir, Henry, 27, Mornington-road; Albion-terrace; and Exeter                            | E. Every, Exeter; Wm. Kingdon, King's-arms-yard            |
| Legge, Alfred, Gateshead                                                                   | G. W. Cram, Newcastle-upon-Tyne                            |
| Lever, Charles Baldwin, 12, Tavistock-square; and King's-road                              | C. Lever, Frederick's-place                                |
| Lewis, Charles Carne, jun., 6, Ely-pl., Holborn; and Brentwood                             | C. C. Lewis, sen., Brentwood                               |
| Lloyd, Henry, 13, Durnford-ter., Kentish-town; and Winchester                              | F. Bowker, Winchester                                      |
| Lush, Frederick Matthew, 13, Durnford-terrace, Kentish-town; and Winchester                | J. H. Todd, Wichester                                      |
| Lynch, George Sanderson, 41, George-st., Portman-square; and Clifton, near Bristol         | H. A. Palmer, Bristol                                      |
| Macdonald, Alexander Cleiland, 5, Great Ormond-street; Southampton-row; and Exeter         | F. Sanders, Exeter                                         |
| Mant, George French, 8, Everett-st., Brunswick-square; and Storrington                     | A. Mant, Storrington; G. Waugh, Gt. James-st.              |
| Marchant, John, jun., 57, Coleman-street; and Hertford                                     | J. L. Foster, Hertford                                     |
| Marshall, Henry, jun., 7, Baker-street, Portman-square; and Godalming                      | H. Marshall, Godalming                                     |
| Marshall, Richard, 8, Carlton-villas, Holloway                                             | A. W. Irwin, Gray's-inn-square                             |
| Martin, Charles, 10, Soley-terrace, Pentonville; and Stouod                                | H. Whickham, Stroud; J. Blaxland, Crosby-sq.               |
| Mayers, Henry Stewart, Warwick                                                             | T. Nicka, Warwick                                          |
| Moore, George Townsend, Wigan                                                              | E. Scott, Wigan                                            |
| Morris, James Shippard, North Shields                                                      | G. Kewney, North Shields.                                  |

[To be continued.]

NOTES OF THE WEEK.

BILLS OF EXCHANGE BILL.

THIS project has made some progress in the Committee of the House of Commons. Mar-

vellous is the discovery in commercial England, that we must now imitate the "summary diligence" which has prevailed on the other side of the Tweed for 200 years; and this, after all the improvements effected during the last 20 years, both in the Superior and Inferior

Courts! The attorneys need not oppose this alteration of the law and practice. It can do them no harm, either in town or country. We took the matter up, because an attempt was made to make a "handle" of this topic (as has been done on many other occasions), for the purpose of imputing blame to the London solicitors for neglecting the interests of their Country brethren. One only of all the Provincial Law Societies interfered on the question of authorising all attorneys to act as notaries in noting and protesting bills under the proposed Act. Is not this a sufficient proof that the Profession in the country did not entertain any fears of the effect of the scheme? We retain the opinion that the public interest does not call for this alteration of the law, and that at all events it should be postponed until the whole subject of the assimilation of the Laws of England and Scotland can be carefully considered, with the advice which the Mercantile Law Commissioners may communicate by their report. After a Royal Commission of Inquiry has issued, can any course be more injudicious than passing an Act on a mere fraction of a complicated and extensive system, before the evidence has been received or considered? Have not some of our legisla-

tors "eaten of the root that takes the reason prisoner?"

#### INNS OF COURT AND CHANCERY.

Several of the gentlemen who hold the office of Principal in the Inns of Chancery have been called before the Commissioners, but, as might be anticipated, they have little to communicate. The nature and constitution of these "ancient and honourable Societies" are well known, and it may not unreasonably be asked—*what is the object of the Commission?* If any of the Inns of Chancery have a surplus income, what is it proposed should be done? Do the Benchers of the Inns of Court claim the surplus? Is it to be added to the rental of the Inns of Court for the advantage of the Bar, or applied towards the improvement of the attorneys and solicitors? We presume that branch of the Profession will lose no time in suggesting a plan that may meet with general approval for the better acquisition of legal knowledge, and facilitating the discharge of professional duties. Might we suggest that the governing bodies of the Inns of Chancery and the Council of the Incorporated Law Society should unite in considering this important subject?

### RECENT DECISIONS IN THE SUPERIOR COURTS.

#### Lord Chancellor.

*In re Tillie and Henderson's Patent.* July 29, 1854.

#### SEALING PATENT. — COSTS OF OPPOSING SPECIFICATION.

*An application to seal a patent was postponed until the payment of the costs of opposing successfully certain parts of the specification before the Solicitor-General.*

THIS was an application to seal this patent. *Baggallay* in support; *Webster*, contra, on the ground of the nonpayment of the costs of opposing successfully certain parts of the specification before the Solicitor-General.

The Lord Chancellor said, that the patent could not be sealed until the costs in question were paid.

#### Lords Justices.

*Smith v. Adams.* July 24, 25; Aug. 1, 1854.

#### RIGHT OF WIDOW OF UNADMITTED SURRENDEREE TO FREEBENCH IN COPYHOLDS.

Held, reversing the decision of the Master of the Rolls, that the widow of an unadmitted surrenderee of copyholds is not entitled to freebench therein.

THIS was a suit for the administration of the estate of George Smith. It appeared that he purchased in July, 1845, of John Beasley, certain copyhold hereditaments held of the manor of Weedon Beck, Northamptonshire,

subject to the right of freebench therein of the vendor's mother, Ann Beasley, and who had been informally admitted to an undivided moiety instead of having her freebench set out according to the custom. By an indenture of even date, the testator was to enjoy undivided possession of the entirety, paying an annuity of 40*l.* to Mrs. Beasley for her life, and retaining 400*l.* of the purchase-money until six months after her death, and he accordingly entered into possession, but was never admitted thereto. Upon his death in February, 1851, intestate, as to the residue of his real and personal estate, and leaving the defendant, John Smith, his customary heir, the latter was admitted to all his copyhold estates, with the exception of the estate in question, and upon the death of Mrs. Beasley, in 1853, the testator's widow filed this bill for an administration, claiming freebench, and for a commission to set it out. The Master of the Rolls held, that the plaintiff was not entitled to freebench in respect of the moiety in which Mrs. Beasley had a life interest, but only as to the other moiety upon the admission of the defendant, and that he was trustee for her to its amount until he should be so admitted. The defendant appealed from the latter part of the decision.

*Lee and Horace Wright* in support; *Swanston and Jolliffe*, contra.

*Cur. ad. vult.*

The Lords Justices said, that the Dower Act, 3 & 4 Wm. 4, c. 105, did not extend to freebench. The right to freebench depended upon the seisin of the husband, who in this

case was never seised, and having died before admittance, could not be seised by relation or otherwise. The plaintiff could not have compelled her husband to be admitted during his lifetime, and she had no better right upon his death to call on his heir to be admitted. She had, therefore, no grounds whatever for equitable relief against the heir, and it was difficult to see how the heir could be treated as a trustee, and in the absence of fraud or other special circumstances, it would be going beyond any existing authority to convert him into a trustee (*Vaughan v. Atkins*, 5 Burr. 2764; *D'Arcy v. Blake*, 2 Sch. & Lef. 387). The bill must therefore be dismissed without costs, but if, however, she wished to try the question at law, it would be retained for a year, with liberty to apply by mandamus or otherwise, as she might be advised; the costs to be reserved, but if she failed the bill would then be dismissed with costs.

*In re Lancashire and Yorkshire Railway Company, ex parte Macaulay.* July 29, 1854.

RAILWAY COMPANY.—INVESTMENT OF PURCHASE-MONEY IN LEASEHOLD FOR 1000 YEARS.

Held, that an investment cannot be ordered under the 8 & 9 Vict. c. 16, s. 69, of the purchase-money of freehold lands taken by a railway company in the purchase of lands held on lease for 1000 years of which 750 were unexpired, although the demise contained no covenants nor proviso for re-entry.

THIS was an application under the 8 & 9 Vict. c. 16, s. 69, for the investment of the purchase-money of certain freehold lands taken by the above railway company in the purchase of premises held on lease for 1000 years, and of which 750 were unexpired.

*Dart*, in support, stated that in the demise there were no covenants nor proviso for re-entry, citing *In re Cann's Estate*, 19 Law J., N. S., Ch., 376, where *Bruce*, Lord Justice, when Vice-Chancellor, had sanctioned an investment in copyholds.

The Lords Justices (without calling on *Bacon*, *contra*) said, that the section referred to did not confer any jurisdiction to make the order asked, and the application was accordingly refused.

*Farquhar v. Addington.* July 31, 1854.

EXAMINATION OF WITNESSES AFTER DECREE ON TAXATION OF COSTS.

*Quære*, whether the examiner can, after decree, proceed to examine witnesses whose evidence is required on the taxation of costs without a special order.

But on an application for such order being made, it is necessary to mention the names of some of the witnesses whom it is intended to examine.

THIS was an application for an order on the

examiner to examine witnesses whose evidence was required on the taxation of costs under the decree in this suit. The examiner objected to proceed without a special order.

*Malins* and *C. Browne* in support; *Greene*, *contra*.

The Lords Justices said, that the names of some of the witnesses, whom it was intended to examine, must be mentioned, and the application stood over accordingly.

Vice-Chancellor Kindersley.

*Morgan v. Morgan.* July 29, 1854.

MARRIED WOMAN.—EQUITY TO SETTLEMENT ON HUSBAND'S INSOLVENCY.

A married woman became entitled, since the insolvency of her husband, to a sum of 920*l.*; Held, that there must be a settlement to her separate use of the whole, and after her death the capital to go to the children of the marriage.

*Pearson* appeared in support of this petition on behalf of Mrs. Morgan for the settlement to her separate use of a sum of 920*l.* to which she had become entitled since the insolvency of her husband.

*Osborne* for the husband, *contra*, as to a moiety of the fund.

The Vice-Chancellor said, that there must be a settlement as prayed,—the children to take the capital upon the wife's death.

*In re Good Intent Benefit Society.* July 28, 31, 1854.

TRUSTEES' ACT 1850.—NEW TRUSTEES, WHERE ONE OF UNSOUND MIND.—JURISDICTION.

An application under the 13 & 14 Vict. c. 60, s. 32, for the appointment of new trustees, was directed to be made to the Lord Chancellor or Lords Justices, where one of the former trustees was of unsound mind.

THIS was a petition under the 13 & 14 Vict. c. 60, s. 32, for the appointment of two new trustees of this society, upon the death of one and the other being of weak intellect.

*Taylor* and *Hallett* for the several parties.

The Vice-Chancellor said, that the Act conferred no jurisdiction with reference to the removal of the trustee of unsound mind, and that the application must therefore be made either to the Lord Chancellor or Lords Justices.

*In re Stane's Trust.* July 31, 1854.

REQUEST OF LEGACY FOR DISTRIBUTION AMONG POOR AND NEEDY OF PARISH.

Bequest of 500*l.* to be distributed by executor among the poor and needy of a parish in every respect as he should choose. The executor died without having proved, and the residuary legatees administered and paid the legacy into Court. The parish rate-

*payers had resolved that the fund should be applicable to the two national schools; but the Attorney-General had certified that the dividends should be paid to a dispensary near the parish in order that the poor might receive medical relief, and order accordingly.*

THE testatrix, Mary J. Stanes, by her will, dated in December, 1837, gave to her executor, Mr. Larcher, the sum of 500*l.* to be distributed by him among the poor and needy of the parish of Great Baddow in the county of Essex, in every respect as he should choose. It appeared that Mr. Larcher died without having proved the will, and that one of the residuary legatees had administered and paid the amount into Court. A meeting of the rate-payers had been held, at which it was resolved that the sum in question should be applied for the two national schools of the parish under the direction of the Court, and this petition was presented by the parties about to act as the trustees for the purpose. On the hearing, in July, 1853, the matter was referred to the Attorney-General, who now certified that the fund should be invested in the names of trustees, and the dividends be paid from time to time to the funds of the Chelmsford dispensary, near which the parish of Great Baddow was situate, in order that its sick poor might receive medical relief under the nomination of the trustees, and this application was now made for an order in accordance with such certificate.

*Selwyn and Cairns* in support; *Terrell* for the Attorney-General; *Osborne* for other parties.

The Vice-Chancellor made the order as asked and for the appointment of the four trustees.

#### Vice-Chancellor Stuart.

*Gray v. Cann.* July 31, 1854.

WILL.—CONSTRUCTION.—WHETHER GIFT ABSOLUTE OR FOR LIFE.

*A testatrix directed her executors to raise 800*l.* in trust, to divide the same into eight equal parts, and to pay one part to each of her eight children as therein directed, and she declared that if any of her said children should die leaving any child or children, such child or children, if more than one, should have and take the share of his, her, or their respective parent equally: Held, on special case, under the 13 & 14 Vict. c. 35, that the children of the testatrix, who survived her, took absolutely, and not a life estate only, with remainder to their children.*

THE testatrix, by her will, directed her executors to raise a sum of 800*l.*, in trust, to divide the same into eight equal parts, and to pay one part to her daughter, Mrs. Gray, or in the event of her death in her lifetime, then to her husband, another part to the children of a deceased daughter, another part to a son, and as to the remaining five parts, in trust, to pay one part to each of her other children, and she de-

clared that if any of her said children should die, leaving any child or children, such child or children, if more than one, should have and take the share of his, her, or their respective parent equally. This special case was now presented under the 13 & 14 Vict. c. 35, as to the construction of the will.

*Smale* for the children of the testatrix; *Bagshawe* for the grandchildren; *Surrage* for the surviving executor and trustee.

The Vice-Chancellor said, that the children of the testatrix who survived her were entitled to their shares absolutely, and that they did not only take for life with remainder to their children. The costs of all parties to come out of the estate.

#### Vice-Chancellor Wood.

*Tapping v. Hooper.* July 27, 1854.

EQUITY JURISDICTION IMPROVEMENT ACT.—DELIVERY OF PRINTED COPIES OF BILL.—COSTS.

*The plaintiff had not delivered, under the 15 & 16 Vict. c. 86, s. 7, two printed copies of the bill pursuant to notice: Held, that he was liable to the costs of a motion for such delivery, or for the bill to be taken off the file, although an order had been obtained at the Rolls dismissing the bill, with costs, where such order was not obtained before service of the notice of motion.*

THIS was a motion upon notice for an order on the plaintiff to deliver two printed copies of the bill filed in this suit pursuant to the 15 & 16 Vict. c. 86, s. 7,<sup>1</sup> or in default that the bill should be taken off the file. It appeared that his Honour had, on July 26, ordered the delivery forthwith, but that the copies had not been delivered.

*Bevir* in support.

*Terrell*, contra, as to costs,—the common order having been obtained at the Rolls dismissing the bill with costs.

The Vice-Chancellor said, that as the notice of this motion had been served before the bill was dismissed, the defendant was entitled to costs.

<sup>1</sup> Which enacts, that “the plaintiff in any suit to be commenced in the said Court after the time hereinafter appointed for the commencement of this Act shall be bound to deliver to the defendant or his solicitor, upon application for the same, such a number of printed copies of his bill of complaint or claim as he shall have occasion for, upon being paid for the same at such rate as shall be prescribed by any General Order of the Lord Chancellor in that behalf.” The 5th Order of August 7, 1852, directs that “the payment to be made by the defendant to the plaintiff for printed copies of the bill or claim shall be at the rate of one halfpenny per folio;” and Order 6, “that no defendant shall be at liberty to demand from the plaintiff more than 10 printed copies of his bill or claim.”

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

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SATURDAY, AUGUST 12, 1854.
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### POSTPONED LAW BILLS IN PARLIAMENT.

THE Session being about to close, it may be convenient to review briefly the various measures for the alteration of the Law which have been introduced or notified to Parliament, and subsequently negatived or abandoned. Taking them in the order of their importance, as they might have affected the interests or convenience of the Profession, they are as follow:—

1st. The Bills relating to the *Ecclesiastical Courts*. These were four in number, namely: the Testamentary Jurisdiction Bill;—the Divorce and Matrimonial Causes' Bill;—the Amendment of the Law of Adultery as to Actions for Criminal Conversation;—and the Marriage of Dis-senters.

2nd. The Bills affecting the Law of *Property and Conveyancing*, viz: The Conveyance of Real Property Amendment Bill, as to the taxation of costs according to skill, labour, and responsibility;—the Apportionment of Rent;—the Personal Estate of Married Women;—Disposal of Property by Persons under Religious Vows;—the Amendment of the Law of Mortmain;—Succession of Real Property of Intestates by all his Children or Next of Kin;—Amendment of the Law of Simony for the purpose of preventing the Sale of next Presentations;—the Drainage of Lands;—and the Establishment of Joint-Stock Executor and Trustee Companies for the Administration of Private Trusts.

3rd. The enforcement of *Executions* on English Judgments in Ireland and Scotland, and of Irish and Scotch Judgments in England;—the substitution of Declarations in lieu of *Oaths*;—the amendment of the Law of *Arbitration*;—the extension of the

Jurisdiction of the *Stannaries Courts*;—and the Registration of "dishonoured" *Bills of Exchange*, for the purpose of enforcing payment in six days, at the peril of immediate execution.

4th. The *Declaratory Suits*' Bill, to determine the future rights of parties and perpetuate the testimony of witnesses in support of, or in opposition to, anticipated claims or subjects of litigation.

5th. The Bill for the further amendment of the Law of *Patents*.

6th. The *Assimilation of the Mercantile Laws* of England, Ireland, and Scotland.

7th. The amendment of the Metropolitan *Buildings*' Act,—a measure, no doubt, much needed in many respects, but difficult to effect, consistently with existing rights and interests.

8th. The six Bills relating to *Parliamentary Elections*, namely:—the Trial of Election Petitions;—the prevention of Corrupt Practices at Elections; the abolition of the Property Qualification of Members;—the abolition of Members' Privilege from Arrest;—the vacating the Seats of Members on accepting Government Offices;—and a second Bill for the Prevention of Bribery.

9th. The *Criminal Law* Bills,—viz., nine for the Consolidation of the Criminal Law, besides the following:—Amendment of Criminal Procedure;—appointment of Public Prosecutors; abolition of the Punishment of Death;—the Prevention of Frauds as to Bills of Exchange;—and the extension of the Police system throughout England and Wales.

10th. Several Bills were also proposed for the amendment of the *Poor and Parochial Laws*,—namely, the Law of Settlement;—Uniform Assessment throughout the Kingdom;—abolition of Church Rates;

—and the further regulation of Parish Vestries.

It will be seen from this long catalogue, that of the numerous Bills brought before Parliament relating to the Law, so large a number as 47 have been either actually rejected, or abandoned as hopeless, at least for the present Session. Several of the measures, however, will, no doubt, be revived in the next Session, and the postponement of some of them will naturally be much regretted. The Public, as well as the Profession, had long anticipated the reform or abolition of the Ecclesiastical Courts. To what tribunals the testamentary and divorce jurisdictions should be transferred, will again be the subject of debate in the next Session. Whether they are to be distinct Probate and Divorce Courts, or the Court of Chancery is to absorb the former, and the Common Law Courts the latter, will be matter for future consideration. It cannot, however, be expected that the contemplated reform can be much longer delayed. After Parliamentary Committees, Royal Commissioners, and the public Press have so strongly condemned the present system, we may reasonably expect that, in some form or other, a large measure of reform will take place at an early period.

In another Session we may also look forward to important changes in the department of Conveyancing, and therewith it is probable an alteration will be effected in the mode of remunerating solicitors, proportioned to the skill and labour they bestow, and the responsibility they incur, rather than the length of legal documents. If that change should be effected with regard to the transfer of property, it will probably be extended to suits in Equity and proceedings at Law. The projectors of the late Joint-Stock Trustees and Executors' Companies, may perhaps again make their appearance, but not with the imposing title of the South Sea Corporation, for its affairs, we understand, will be wound up forthwith.

We know not that the Profession need resist the proposed alteration of the law regarding the Succession to real Property where the owner dies intestate. Either by wills, or settlements, large landed estates are for the most part secured to the head of the family, and the proposed alterations would be limited to cases where no will or settlement existed. Forewarned of the change in the law, the "landed interest"

will of course take such course as they may be advised for carrying their intentions into effect.

The Laws of Mortmain will probably again come under review, but great caution will be necessary in framing restrictions against charitable bequests. The clauses in that respect formed the principal objection to the recent Bill.

The Bill for the Registration of Dishonoured Bills of Exchange has already been revived by the Noble Lord who proposed the recent enactments, but in the new Bill some modifications we understand have been suggested. Before another Session, we may perhaps be favoured with the report of the Commissioners on Mercantile Law, accompanied by the evidence they are collecting on this and the numerous other points of dissimilarity between the laws of England and Scotland.

From the petitions which have been recently presented,<sup>1</sup> it appears that a considerable part of the commercial classes are in favour of a speedier remedy than now exists for enforcing the payment of bills of exchange. If this really be the general wish of the public, in consequence of any existing grievance, the present period of 16 days under the Common Law Procedure Act may be shortened, and to prevent pleas for delay, the defendant may be required to verify his defence by affidavit, to the same effect as would be required under the proposed Act to entitle him to go to trial.

The other Bills comprised in the preceding statement, do not prominently affect the interests of the Profession, and the consideration of them may therefore be deferred to a more convenient opportunity, either when they reappear on the table of the House, or are again brought into public notice.

There are a few more Bills, the fate of which is not yet finally decided for the Session, to which we shall hereafter advert. In the Postscript will be found the latest information, at the time we go to press, of the state of the remaining Bills. The Court of Chancery Bill, relating to the Assessment of Damages, has been postponed; and in the other Bill, the Clauses for appointing "Clerks of Receivers' Accounts," have been struck out.

<sup>1</sup> Whether these petitions are really spontaneous, or "got up" by the promoters of the measure, does not appear. None of them preceded the introduction of the measure.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts of the present Session printed in the present Volume, with an Analysis to each, will be found at the following pages :—

Income Tax, cc. 17, 24, pp. 46, 131, *ante*.

Commons' Inclosure, c. 9, p. 64.

County Court Extension, c. 16, 121.

Registration of Bills of Sale, c. 36, p. 216.

Warwick Assizes, c. 35, p. 218.

Attendance of Witnesses, c. 34, p. 235.

Evidence in Ecclesiastical Courts, c. 47, p. 254.

Commons' Inclosure (No. 2), c. 48, p. 254.

### CRUELTY TO ANIMALS.

17 & 18 VICT. c. 60.

The Preamble recites the 5 & 6 Wm. 4, c. 59, and 12 & 13 Vict. c. 92.

All persons who have impounded animals, and provided food, &c., since passing of 12 & 13 Vict. c. 92, or shall hereafter impound, &c., may recover expenses. Power to sell animals, &c., after being impounded seven days; s. 1.

Provision of 2 & 3 Vict. c. 47, as to the using of dogs for purposes of draught within the metropolitan district extended to all parts of the United Kingdom; s. 2.

Interpretation of terms; s. 3.

The following are the Title and Sections of the Act :—

An Act to amend an Act of the Twelfth and Thirteenth Years of her present Majesty for the more effectual Prevention of Cruelty to Animals. [31st July, 1854.]

Whereas by an Act passed in the Session of Parliament holden in the 5 & 6 Wm. 4, c. 59, intitled "An Act to consolidate and amend the several Laws relating to the cruel and improper Treatment of Animals, and the Mischiefs arising from the driving of Cattle, and to make other Provisions in regard thereto," every person impounding any horse, ass, or other cattle or animal was required to supply such cattle or animal daily with good and sufficient food and nourishment whilst impounded; and by the said Act every such person who should so find, provide, and supply any such horse, ass, or other cattle or animal with such daily food and nourishment as aforesaid should and might and they were thereby authorised to recover of and from the owner or owners of such cattle or animal not exceeding double the full value of the food and nourishment so supplied to such cattle or animal, by proceeding before any one justice of the peace within whose jurisdiction such cattle or animal should have been so impounded and supplied

with food as aforesaid, in like manner as any penalty or forfeiture, or any damage or injury might be recovered under and by virtue of any of the powers or authorities in the said Act contained, and which value of the food and nourishment so to be supplied as aforesaid, such justice was thereby fully authorised and empowered to ascertain, determine, and enforce as aforesaid; and every person who should have so supplied such food and nourishment as aforesaid should be at liberty, if he should so think fit, instead of proceeding for the recovery of the value thereof as last aforesaid, after the expiration of seven clear days from the time of impounding the same, to sell any such horse, ass, or other cattle or animal, openly at any public market (after having given three days' public printed notice thereof) for the most money that could be got for the same, and to apply the produce in discharge of the value of such food and nourishment so supplied as aforesaid and the expenses of and attending such sale, rendering the overplus (if any) to the owner of such cattle or animal; and any such persons as aforesaid neglecting or refusing to supply such cattle or animal with such food as aforesaid were made liable to certain penalties: and whereas by an Act passed in the session of Parliament holden in the 12 & 13 Vict., intitled "An Act for the more effectual Prevention of Cruelty to Animals," the said first recited Act and a certain other Act extending the provisions of the same to Ireland were repealed; and by the said Act of the 12 & 13 Vict., it was enacted, that every person who should impound or confine, or cause to be impounded or confined, in any pound or receptacle of the like nature, any animal, should provide and supply during such confinement a sufficient quantity of fit and wholesome food and water to such animal, and every such person who should refuse or neglect to provide and supply such animal with such food and water as aforesaid should, for every such offence, forfeit and pay a penalty of 20s.; and power is thereby given in case of neglect for a certain time to supply such food and water for any person to supply the same, and the reasonable cost of such food and water is to be paid by the owner of such animal before such animal is removed to the person who shall supply the same, and the said costs may be recovered in like manner as therein provided for the recovery of penalties under the said Act: and whereas it is doubtful whether the last recited Act gives any remedy to the person impounding for the recovery of a compensation for the food and water provided for any animal, and no power is given to sell the animal, although full provisions for those purposes were contained in the said first recited Act: be it therefore enacted as follows :—

1. Every person who since the passing of the said Act of the 12 & 13 Vict. has impounded or confined, or hereafter shall impound or confine as in the said Act mentioned, any animal, and has provided and supplied or



shall hereafter provide and supply such animal with food and water as therein mentioned, shall and may and he is hereby authorised to recover of and from the owner or owners of such animal not exceeding double the value of the food and water so already or hereafter to be supplied to such animal, in like manner as is by the said last-mentioned Act provided for the recovery of penalties under the same Act; and every person who has supplied or shall hereafter supply such food and water shall be at liberty, if he shall so think fit, instead of proceeding for the recovery of the value thereof as last aforesaid, after the expiration of seven clear days from the time of impounding the same to sell any such animal openly at any public market (after having given three days public printed notice thereof) for the most money that can be got for the same, and to apply the produce in discharge of the value of such food and water so supplied as aforesaid and the expenses of and attending such sale, rendering the overplus (if any) to the owner of such animal.

2. And whereas by an Act passed in 2 & 3 Vict. it was enacted, under a penalty, that dogs should not be used for the purposes of draught within the metropolitan police district, and it is desirable that such enactment should be extended to all parts of the United Kingdom: be it enacted, that any person who shall, from and after the 1st of January, 1855, on any public highway in any part of the United Kingdom, use any dog for the purpose of drawing or helping to draw any cart, carriage, truck, or barrow, shall forfeit and pay a penalty not exceeding 40s. for the first offence, and not exceeding 5l. for the second and every subsequent offence, such penalties to be recovered in like manner as is provided for the recovery of penalties under the Act of 12 & 13 Vict.

3. The words and expressions to which a meaning is affixed by the said Act of 12 & 13 Vict., and which are introduced into this Act, shall have the same meaning in this Act, and the word animal shall in the said Act and in this Act mean any domestic animal, whether of the kind or species particularly enumerated in clause 29 of the said Act, or of any other kind or species whatever, and whether a quadruped or not.

#### ECCLESIASTICAL JURISDICTION.

17 & 18 VICT. c. 65.

An Act for further continuing certain temporary Provisions concerning Ecclesiastical Jurisdiction in England. [31st July, 1854.]

Whereas an Act was passed in the Session holden in the 10 & 11 Vict. c. 98, intituled "An Act to amend the Law as to Ecclesiastical Jurisdiction in England," by which it was enacted that certain of the provisions therein contained should continue until the 1st day of August, 1848, and, if Parliament were then sitting, until the end of the then Session of Parliament; and such provisions have been continued by sundry Acts until the 1st day of

August, 1854, and to the end of the then next Session of Parliament: And whereas it is expedient that the said provisions should be further continued: Be it therefore enacted, that the said provisions of the said Act shall continue until the 1st day of August, 1855, and to the end of the then next Session of Parliament.

#### HIGHWAY RATES.

17 & 18 VICT. c. 52.

An Act to continue an Act for authorising the Application of Highway Rates to Turnpike Roads. [31st July, 1854.]

Whereas an Act was passed in the 4 & 5 Vict. c. 59, intituled "An Act to authorise for one year, and until the end of the then next Session of Parliament, an Application of a Portion of the Highway Rates to Turnpike Roads in certain Cases," which Act has been continued by sundry Acts until the 1st day of October, in the year 1854, and to the end of the then next Session of Parliament; and it is expedient that the same be further continued: Be it enacted, that the said Act shall be continued until the 1st day of October, 1860, and to the end of the then next Session of Parliament.

#### TURNPIKE TRUSTS' ARRANGEMENTS.

17 & 18 VICT. c. 51.

An Act to confirm certain Provisional Orders made under an Act of 14 & 15 Vict. c. 38, to facilitate Arrangements for the Relief of Turnpike Trusts, and to make certain Provisions respecting Exemptions from Tolls. [31st July, 1854.]

Whereas, in pursuance of the Act of the 14 & 15 Vict. c. 38, "To facilitate Arrangements for the Relief of Turnpike Trusts, and to make certain Provisions respecting Exemptions from Tolls," certain provisional orders have been made by the Right Hon. Viscount Palmerston, one of her Majesty's principal Secretaries of State, for reducing the rate of interest, and for extinguishing the arrears of interest on the mortgage debts charged or secured on the tolls or revenues of certain turnpike roads, and such orders have been published in the *London Gazette*, and in newspapers circulating in the neighbourhood of such roads, and the dates of such provisional orders, and the Acts under which the tolls or revenues on which such debts are charged or secured are levied or raised, together with the amount to which the rate of interest on such debts is to be reduced, and the day up to which the interest and arrears of interest on such debts are to be extinguished by such orders are mentioned in the schedule to this Act: and whereas it is expedient that the said provisional orders should be confirmed, and made absolute: be it therefore enacted, that the said provisional orders are hereby confirmed, and made absolute, and shall be as binding and of the like force and effect as if the provisions thereof had been expressly enacted by Parliament.

SCHEDULE.

| Date of Provisional Order. | TITLE OF LOCAL ACT.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Amount of Principal Debt.     | Interest to be reduced to the following Rates per Annum. | Arrears of Interest to be extinguished to the following Dates. |
|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|----------------------------------------------------------|----------------------------------------------------------------|
| 1853.<br>Oct. 14 .         | 3 & 4 Viet. c. 84, "An Act for repairing the Road from the Maidstone Turnpike Gate on the Loose Road in the parish of Maidstone in the county of Kent, to Newcastle in the parish of Biddenden, and a Branch Road to the Thorn in the parish of Smarden in the same county".                                                                                                                                                                                                                                           | £   s.   d.<br>10,570   0   0 | 4l. per cent.                                            | Dec. 31, 1850                                                  |
| 1854.<br>Jan. 7 .          | 5 W. 4, c. 19, "An Act for repairing the Road from Little Bowden in the county of Northampton to Rockingham in the same county"                                                                                                                                                                                                                                                                                                                                                                                        | 2,728   0   0                 | 3l. per cent.                                            | Jan. 1, 1853                                                   |
| Jan. 7 .                   | 7 Geo. 4, c. 19, "An Act for making and maintaining a Turnpike Road, commencing at or near a certain house called the Shrewsbury Arms, situate at Hinderton in the township of Little Neston, by way of Upton, and terminating in the township of Hoose, and from Upton aforesaid to the township of Birkenhead, and also certain Branches of Road to communicate therewith, all in the County Palatine of Chester"                                                                                                    | 3,400   0   0                 | 34. 10s. per cent.                                       | Dec. 31, 1853                                                  |
| Feb. 7 .                   | 7 Geo. 4, c. 13, "An Act for making and maintaining a Road from Godalming, through Hascombe, to Pains Hill, in the county of Surrey."                                                                                                                                                                                                                                                                                                                                                                                  | 2,380   0   0                 | 1d. per cent.                                            | Dec. 31, 1853                                                  |
| Feb. 7 .                   | 5 Geo. 4, c. 54, "An Act for repairing and improving the Road from Back Lane in the parish of Scartho, to Hollogate Head in the parish of Louth in the county of Lincoln."                                                                                                                                                                                                                                                                                                                                             | 4,712   1   0                 | 2l. per cent.                                            | Jan. 1, 1854                                                   |
| April 3 .                  | 11 Geo. 4, c. 18, "An Act for more effectually repairing and maintaining the Road from New Chappel in the county of Surrey to Ditchelene Bost Hills in the county of Sussex, and from thence to the town of Brighthelmstone in the same county; and also for making and maintaining a Branch of Road from the town of Ditcheling to Clayton in the county of Sussex," as far as the same relates to the Ditcheling and Clayton Branch Road.                                                                            | 1,900   0   0                 | 14. 10s. per cent.                                       | Dec. 31, 1852                                                  |
| April 29 .                 | 37 Geo. 3, c. 45, "An Act for making and keeping in repair a Carriage Road from or near the town of Brough-under-Stainmore in the county of Westmoreland, to Middleton Bridge in the parish of Romaldkirk in the North Riding of the county of York, with a branch from or near Chapel House to Eggleston Bridge in the same parish."                                                                                                                                                                                  | 1,620   0   0                 | 1d. per cent.                                            | Dec. 31, 1853                                                  |
| May 24 .                   | 4 Geo. 4, c. 15, "An Act for repairing and improving the Roads from the town of Stockbridge to the city of Winchester, and from the said city of Winchester to the top of Stephen's Castle Down, near the town of Bishop Waltham in the county of Southampton, and from the said city of Winchester through Otterborne to the Bar Gate in the town and county of the town of Southampton, and certain Roads adjoining thereto," as far as the same relates to the Road described as "the Winchester and Waltham Road". | 1,500   0   0                 | 1d. per cent.                                            | Dec. 31, 1855                                                  |
| June 19 .                  | 5 Geo. 4, c. 91, "An Act for making and maintaining a Road from Brighthelmstone to Newhaven in the county of Sussex"                                                                                                                                                                                                                                                                                                                                                                                                   | 10,650   0   0                | 2l. per cent.                                            | Dec. 31, 1852                                                  |

## NOTICES OF NEW BOOKS.

*Sheriff-Law; or a Practical Treatise on the Office of Sheriff, Under-Sheriff, Bailiffs, &c.: their Duties at the Election of Members of Parliament and Coroners, Assizes, and Sessions of the Peace. Writs of Trial; Writs of Inquiry; Compensation Notices; Interpleader; Writs; Warrants; Returns; Bills of Sale; Bonds of Indemnity, &c.* By GEORGE ATKINSON, Serjeant-at-Law, Author of "The Shipping Laws of the British Empire," "International Law," &c. Third Edition. London: Longman, Brown, Green, and Longmans. 1854. Pp. 310.

MR. SERJEANT ATKINSON, in this Third Edition of his Treatise, arranges the subject-matter in the following order:—

1st. Introductory observations on the antiquity and nature of the office of sheriff; his qualifications, mode of nomination, and appointment.

2nd. His judicial duties.

3rd. His ministerial duties.

4th & 5th. The execution of the various kinds of writs.

6th. Actions against the sheriff.

7th. Actions by the sheriff.

8th. The sheriffs' accounts.

Passing over the historical part of the work relating to the high sheriff, and the great antiquity and honourable nature of his functions, we come to the *under-sheriff*, an office peculiarly belonging to the larger branch of the Profession. The learned Serjeant thus states the mode of appointment and authority of an under-sheriff:—

"One, who has an office of trust, cannot, at common law, make a *deputy*, without express words in his patent or grant so to do.

"The high sheriff is an officer of great trust and confidence, and therefore he cannot (except he be enabled to do so by express words in his warrant of appointment, or by Act of Parliament) make any deputy in such things as concern his *judicial* power. Nor may he let or assign over his office in any manner; for this would, in effect, be a delegation of his *judicial* powers, which cannot be. In matters concerning his *ministerial* office, he may make, or appoint under him, an under-sheriff, bailiffs, &c., who may occupy their places in right of the high sheriff; and this he may do, although there be no express words in the warrant of appointment to that effect. Formerly, the high sheriff was not obliged to appoint an under-sheriff, but might have done all things himself. It appears, also, that the under-sheriff might have been constituted by parol, or by writing; and at the will and pleasure of the high sheriff; and, therefore, removable at

will and pleasure, although made irrevocable. But now, 'every person so appointed sheriff as aforesaid shall, within one calendar month next after the notification of his appointment in the *London Gazette*, by writing under his hand, nominate and appoint some fit and proper person to be his under-sheriff; and shall transmit a duplicate thereof to the clerk of the peace for the county; to be by him filed, and which he is, by the Act, required to file among the records of his office, and for which he shall be entitled to demand and have from such under-sheriff the sum of 5s. and no more; and such appointment and duplicate shall not be liable to any stamp duty whatever.'

The Author, in one of his notes on this section, observes, that "the 1 Hen. 5, c. 4," [which provided that no under-sheriff should be an attorney in the King's Courts during the time he was in office] "was repealed by 1 Vict. c. 55, s. 1;"<sup>1</sup> but he says, "there still remains the rule of K. B., M. T., 1654, s. 1, as to an attorney serving the office of under-sheriff, and making him liable to be struck-off the Rolls for it." And, he adds, "the Reg. Gen., Hil. Term, 1853," [which repealed all then existing rules of practice and made new rules] "apply only to rules affecting civil actions."

Now the Rule of 1654 (in the time of Oliver Cromwell) might properly subject an attorney to be struck off the Roll who committed the misdemeanor of practising, contrary to the Statute, whilst he held the office of under-sheriff; but the 6 & 7 Vict. c. 73,<sup>2</sup> having expressly repealed that prohibitory enactment, the rule of Court was, of course, in that respect abrogated.

Under this head, the Author further proceeds to remark, that "Neither can the under-sheriff nor his deputy act as a solicitor, attorney, or agent, or sue out any process at any *General or Quarter Sessions of the Peace* within the county under a penalty of 50l.," and for this doctrine he cites 22 Geo. 2, c. 46, and refers to *Faulkener v. Chevell*, 5 Ad. & E. 213; and *Briggs v. Sowton*, 9 Dowl. P. C. 105.

It is singular that the learned writer should also have forgotten that the 22 Geo. 2, c. 46, and no less than 31 other Acts, were repealed by the 6 & 7 Vict. c. 73, as set forth in the first part of the first Schedule to that Statute, as to "so much as relates to attorneys and solicitors."<sup>3</sup>

<sup>1</sup> That Act only repealed so much of the 1 Hen. 5, c. 4, as related to *Fees*.

<sup>2</sup> The learned Serjeant cites only the 1 Vict. c. 55, and seems to have overlooked the subsequent Act.

<sup>3</sup> The 22 Geo. 2, c. 46, related also to locks and weirs, bread, cattle, quakers, &c.

We take it to be quite clear, therefore, that an attorney may now lawfully continue his professional practice whilst holding the office of under-sheriff.

The learned Serjeant next states the law relating to the sale of the office of under-sheriff, and the security to be given to the sheriff :—

“ By the 3 Geo. 1, c. 15, s. 10, after reciting, that the office of under-sheriff, and other offices and places in the disposal of the high sheriff, had, of late years, been frequently sold, and let to farm, contrary to the several Statutes theretofore made, for restraining sheriffs from such practices, and contrary to the oath, and duty of a sheriff; for remedy thereof it was enacted ‘ that it shall not be lawful to or for any person or persons whatsoever to buy, sell, let, or take to farm the office of under-sheriff, deputy-sheriff, seal-keeper, county-clerk, shire-clerk, gaoler, bailiff, or any other office or place pertaining to the office of high sheriff of any county or shire in England or Wales; or to contract for, promise, or grant for money or other reward or benefit, the said offices or places or any of them; nor to give, take, promise or receive any other consideration whatsoever for the said office, or any of them, directly or indirectly, by themselves or any person in trust for them, or for their use,’ under the penalty of 500*l.*, recoverable in *qui tam* action, such action, being commenced within two years after the offence committed. But this Act did not, in this respect, extend to London and Middlesex, Durham, or to the sheriffs of any city or town being a county of itself. But by the 5 & 6 Anne, c. 31. s. 8, it was declared that ‘ no sheriff of London and Middlesex shall accept, demand, take, or receive of his or their under-sheriff directly or indirectly, either by himself or any person or persons in trust for him or them, any sum or sums of money, gratuity, or present whatsoever for the execution of the place of under-sheriff.

“ Formerly, it was doubted whether the high sheriff could take a security from his under-sheriff, to indemnify him from escapes, and the like; but, in *Norton v. Simmes*, it was held, that he might do so. If the high sheriff (says Dalton) will sleep quietly, and take his repose in safety, he shall do well and wisely to look for and to take good security from his under-sheriff, before he do trust him with his office. Indeed, since the 3 Geo. 1, c. 15, s. 8, which provides, in case of the death of the sheriff, that the security given by the under-sheriff and his pledge shall stand as a security to all persons, it seems to be no longer optional whether a security is to be taken or not. There is the like provision in 2 & 3 Vict. c. 59, as to the under-sheriff’s security to a militia officer called out into active service.”

It may be added, that in case of the death of the high sheriff, the under-sheriff becomes *quasi* high sheriff, and he may then

appoint a deputy. 3 & 4 Wm. 4, c. 99, s. 5. The relation in which he stands to the Court is thus described by the Author :—

“ The under-sheriff is not an officer of the Superior Court, except when he is acting as *quasi* high sheriff under the 3 Geo. 1, c. 15, s. 8, or under the Mutiny Acts. He is the deputy of the high sheriff for all ministerial, and, by Act of Parliament, for some judicial, purposes. He does all things in the name of his principal; and his principal is civilly answerable for his defaults, neglects, and the like.<sup>4</sup> As a general rule, the high-sheriff only, who is the officer of the Court, is chargeable, and not the under-sheriff; but some Acts of Parliament make the under-sheriff expressly liable for his own acts. The power to make bailiffs and precepts is a necessary consequence of his deputation, although the high sheriff does not acquaint him therewith.<sup>5</sup> The high-sheriff cannot appoint two deputy sheriffs extraordinary.<sup>6</sup> All writs, &c., directed to the sheriff, are usually delivered, at once, to the under-sheriff, to make out the proper warrants thereon, which, as we have seen, he may do by force of his deputation.<sup>7</sup> He is obliged to receive them in any place, and at all times, within the county, without anything other than such fees as the law allows; and to make out warrants thereon. The delivering out warrants, before he has the writ in his custody, subjects him to a penalty of 10*l.* Under the like penalty, every warrant must have the same day and year set down thereon, as shall be set down on the writ itself.<sup>8</sup>

“ By the Stat. of 42 Edw. 3, c. 9, it was enacted ‘ that no sheriff, under-sheriff, nor sheriff’s clerk, abide in his office above one year;’ but, by 1 Vict. c. 55, s. 1, the above is repealed, as relates to the time during which under-sheriffs and sheriffs’ clerks may abide in their respective offices.”

With the exception to which we have referred, we think the learned Serjeant has ably and accurately stated the law and practice relating to the office of sheriff, under-sheriffs, and deputies, and their various rights, liabilities, and duties.

<sup>4</sup> *Laicocks case*, Latch, 187; Noy. 90, S. C.: Com. Dig. Tit. *Viscount*.

<sup>5</sup> *Ante*, p. 19.

<sup>6</sup> *Parker v. Kett*, 1 Salk. 96; *Kitten v. Fagg*, 10 Mod. 288; *Drake v. Sykes*, 7 T. R. 113; Bac. Abr. Tit. *Sheriff*; Com. Dig. Tit. *Viscount*.

<sup>7</sup> *Parker v. Kett*, *supra*.

<sup>8</sup> *Denny v. Trepnell*, 2 Wil. 378.

<sup>9</sup> See 3 & 4 Will. 4, c. 42, s. 20, as to the necessity of having a deputy resident within one mile of the Inner Temple Hall for all such purposes.

<sup>1</sup> 6 Geo. 1. c. 21, ss. 53, 54, *Hall v. Roche*, 8 T. R. 187.

## LAW OF ATTORNEYS &amp; SOLICITORS.

## TAXATION OF COSTS AGAINST REPRESENTATIVE OF DECEASED SOLICITOR OF CO-EXECUTORS.

It appeared that Mr. Vines had acted as the solicitor of the testator, Mr. Newell, from 1811 to 1816, and also on behalf of his co-executors until the year 1831, upon being appointed to such office on Mr. Newell's death in 1816. His son, in favour of whom he relinquished business, then acted as the solicitor of the executors. Mr. Vines was chief acting executor, and died in January, 1841, and Mr. Shackell, the sole surviving executor, died in June, 1850, intestate, and his widow administered to his estate, and in October, 1851, obtained the usual order at the Rolls for delivery by Mr. Vines, jun., and by Messrs. Vines and Hobbs of fees and disbursements claimed to be due from the year 1811 to the year 1848 inclusive, and for taxation thereof.

On an appeal from this order,

Lord Cramworth, L. J., said, "The question is now brought before us by way of appeal, and with additional evidence beyond that which was laid before the Master of the Rolls; so that what we have to decide is, not what order should have been made at the Rolls, but what order we ought now to make on all the evidence before us.

"The bills of which taxation is sought relate to several distinct periods of time: 1st, there are the bills of costs which became due from Mr. Newell to Mr. Vines, sen.; 2ndly, the bills that became due from Mr. Newell's executors to Mr. Vines, sen., from the death of Mr. Newell, in 1816, up to the year 1831, when Mr. Vines, sen., ceased to act as solicitor; 3rdly, the bills which became due from the executors to the present Mr. Vines during the life of his father; 4thly, the bills which have become due from the executors, first to Mr. Vines alone, and then to Messrs. Vines and Hobbs from the death of Mr. Vines, sen., other than the four bills already delivered.

"With respect to the first two sets of bills: those which became due to Mr. Vines, sen., first from Mr. Newell himself and afterwards from his executors, it is to be observed that the jurisdiction in this case, if there is any jurisdiction, must rest wholly on the Statute of the 6 & 7 Vict. c. 73, s. 37. The relief sought is not relief asked in any cause pending in the Court, nor relief asked against any person by reason of his being an officer of the Court; the relief is asked against the executor of a deceased solicitor, and though it happens in this case that the executor is himself a solicitor, yet that is obviously an accident which cannot found any jurisdiction against him. The right of the Court to interfere, therefore, depends solely upon the statute. Now it was distinctly decided that, under the former statute

of the 2 Geo. 2, c. 23, there was no power to order taxation against the executor of a solicitor; and in *Maddeford v. Austwick*, 3 Myl. & Cr. 423, Lord Cottenham points out the difficulty, not to say impossibility, of giving this summary relief against an executor, with a due regard to the rights of other creditors. Under the new statute [sect. 39], however (commonly called Lord Langdale's Act), the right is expressly given against the executor of a solicitor as well as against the solicitor himself; and assuming the statute to apply to the executor of a solicitor who had died before the passing of the Act, what we have to decide is, whether this is a case in which we ought to put the provisions of the statute into operation. We think not. This is not a case in which anything is claimed by or on behalf of the representatives of Mr. Vines, sen.; on the contrary, it is admitted by his executor that all his demands were fully settled in his lifetime. He has now been dead nearly 12 years, and has ceased to act as solicitor for above 20 years; and in addition to all this, there has been a decree in a suit instituted for the purpose of administering the estate of Mr. Newell, in which the executor of Mr. Vines, sen., has or might have been called on to account for all sums of money paid to or retained by him out of the assets of Mr. Newell in discharge of his bills of costs. Under these circumstances, in the absence of all proof of imposition or overcharge, we do not feel that we should be warranted in ordering the delivery or taxation of the bills of costs of Mr. Vines, sen., on the present petition. Our only jurisdiction as to these bills is that founded on the statute, and no sufficient case is made to justify us in its exercise.

"The next class of bills consists of those which became due to the present Mr. Vines from the year 1831 up to the death of his father in 1841. Mr. Vines objects to any order calling on him to deliver these bills, or to submit to a taxation of them, on the ground that they were all regularly delivered to his father, the then acting executor, and after such delivery were from time to time regularly paid. The evidence on this subject, part of which was not before the Master of the Rolls, appears to us to establish the truth of what is so insisted on by Mr. Vines. \* \* \* The statutory authority for ordering delivery and taxation of a solicitor's bill is to be found in the 37th section of the 6 & 7 Vict. c. 73, and the provisions of that section seem confined to the case of bills not already paid; but then by sect. 41 it is enacted, that payment shall not preclude the Court from referring a bill for taxation if special circumstances shall seem to require it, provided the application for such

<sup>1</sup> *Lee v. Knight*, Barnes, 119; *Chapple v. Chapman*, ib. 122; *Wallis v. Nicholson*, Andrews, 276; *Gregg's case*, 1 Salk. 89, Sed. vide *Weston v. Pool*, 2 Str. 1056; *Penson v. Johnson*, 4 Taunt. 727, in which a taxation was directed, but a bill need not have been delivered by an executor before commencing an action: *Spink v. Hare*, 1 Barnard, 433; *Barret v. Moss*, 1 C. & P. 3.

reference be made within 12 calendar months after payment. Now here the application has not been made until more than 10 years after the last of such payments, and no reason is given for the delay, except such as suggests itself from the relation in which the solicitor stood to the acting executor. This is certainly not enough to justify us in acting on this petition, upon which we have no jurisdiction so far as relates to this class of bills, except that derived from the statute; for it is not suggested that, during the period now in question, Mr. Vines possessed any part of the testator's assets or became accountable to the executors. We do not forget that the expression in Clacey's affidavit is, that the bills in the lifetime of Edward Vines, the father, were all paid or allowed in account; but this does not vary the case. The bills were all properly made out and delivered. Specific receipts were given on each settlement. Under these circumstances, whether each bill was discharged by a specific payment, or by a credit given to the son by the father in any accounts subsisting between them, is not material: in either case there was payment of the definite ascertained amount of the bill. The mode of making the payment was mere matter of arrangement between the father and the son.

The only remaining bills are those, first of Mr. Vines, and afterwards of Messrs. Vines and Hobbs, for the period subsequent to the death of Mr. Vines, the father. There is no statement that those bills were ever delivered to the parties chargeable. Clacey, indeed, says, in reference to some of them, that they were duly made out according to the custom of Messrs. Vines & Hobbs' office; but there is no evidence that when so made out they were ever delivered to Mr. Shackell, the surviving executor, so that he might, if he had been minded so to do, have submitted them to the consideration of others. Considerable sums of money were from time to time paid to Messrs. Vines and Hobbs, on account of their bills of costs. Clacey says, that Mr. Vines, after his father's decease, received and paid various sums on behalf of the surviving executor. The fair inference from the whole evidence seems to us to be, that after the death of the elder Mr. Vines, there never was any regular settlement of the bills of costs; though the solicitors from time to time, with the assent of Mr. Shackell, the executor, retained money in liquidation of their amount. We do not forget that Mr. Shackell is said to have sworn, as to some of the bills, that he had paid them; but considering that there is no proof of their having been delivered, we do not think that this payment is shown to have been more than a retention by the solicitors or by Mr. Vines, of money for which he was bound to account to the estate. We are therefore of opinion, that Mrs. Shackell is entitled to have an order for delivery and taxation of all bills of costs for business done subsequently to the death of Mr. Vines, the father, on the ground that there never has been a delivery or payment." *In re Vines and another, ex parte Shackell*, 2 De G., M'N. & G. 842.

## LAW OF COSTS.

### SECURITY ON PLAINTIFF GOING ABROAD.

In *Blakeney v. Dufaur*, 2 De G. M'N. & G. 771, which was an appeal from the decision of the *Master of the Rolls*, directing a plaintiff to give security for costs, upon his going to Jersey pending a suit,

Lord *Crawworth*, L. J., said:—"It is a proposition upon which there is no doubt, that a man cannot institute a suit, if resident abroad, without giving security for costs; and the same rule holds where a plaintiff goes abroad, with the intention of permanently residing there. Whenever security is asked for, the question arises, whether the party is resident abroad or not within the meaning of the rule, and the answer to that question depends in each case upon the interpretation to be put upon the phrase 'resident' or 'permanently resident' abroad. If it is supposed that any case lays down this proposition: that a person is not to give security for costs unless it is shown that he intends to end his days abroad, I should entirely dissent from such a decision. That is not the meaning of the rule. If a plaintiff goes to reside abroad, under circumstances rendering it likely that he will remain abroad for such a length of time, that there is no reasonable probability of his being forthcoming when the defendant may be entitled to call upon him to pay costs in the suit, that is sufficient.

"A case of this sort is not to be dealt with by laying down a general rule; it is impossible to define satisfactorily what extent of stay abroad is necessary in every case, to render the rule applicable. In the report of the case before Lord Loughborough in *Hoby v. Hitchcock*, 5 Ves. 699, a gentleman having property in the West Indies had gone there, and the Lord Chancellor, inferring, I presume, that he had gone merely with the temporary object of seeing to his affairs, and intended shortly to return, refused to order security to be given. When I was a Judge at Common Law the Courts constantly refused to require security to be given where the absence abroad of the party appeared to be for a purpose only temporary. It is obvious that, considering the modern facilities for travelling, such orders, if made in those cases, would be a gross oppression. The party must intend to remain abroad permanently, or for so long a time as to render it improbable that he can return within the time when he is likely to be called upon for

costs in the suit. If, for instance, it were shown that he had gone abroad for some object which would keep him there for ten years, he would probably be held to be obnoxious to the rule."

*Bruce, L. J.*—"It is not suggested that this gentleman is or was in any public service, civil or military. He left London for Jersey in May last. He arrived there early in June; we are now in November, and there is no evidence that he has at any time since been in any other place. I am of opinion that, within the meaning of the rule, there has been a permanent change of residence to a place out of the jurisdiction. The appeal must be dismissed with costs."

## CONSTRUCTION OF STATUTES.

### EQUITY JURISDICTION IMPROVEMENT ACT.

#### ORDER TO REVIVE AT INSTANCE OF CREDITOR.

**HELD**, that an order of revivor of a creditor's suit, under the 15 & 16 Vict. c. 86, s. 52, may be made at the instance of a creditor to whom a debt is found due by the Master, and where the report has been confirmed. *Lowes v. Lowes*; *Same v. Ives*, 2 De G., M'N. & G. 784.

#### COUNSEL ON HEARING WITH ASSISTANCE OF COMMON LAW JUDGE.

Upon the hearing of an argument with the assistance of a Common Law Judge under the 14 & 15 Vict. c. 83, s. 8, only one counsel can be heard on each side. *Jones v. Beach*, 2 De G., M'N. & G. 886.

### PROPOSED HALF-HOLIDAY ON SATURDAYS.

THE Memorial of the undersigned Attorneys and Solicitors of her Majesty's Courts at Westminster, on behalf of themselves and all other Attorneys and Solicitors of the United Kingdom, presented on Thursday, the 3rd August, to the Council of the Incorporated Law Society of the United Kingdom, states:—

"That for many years past the members of the Legal Profession have felt that the time hitherto recognised as the business hours of the Profession amounts almost to an exclusion of every other pursuit, whether of a literary, social, or domestic character.

"That your Memorialists observe with satisfaction that a limited relaxation from business has for some time past been observed in Scotland by making two o'clock, P.M., on Satur-

days, the close of the day for transacting legal business, the advantage of which, to individual members of the Profession in Scotland, is fully admitted.

"That your Memorialists, from day to day, also observe a growing disposition on the part of the mercantile and trading community of London to cease from business at mid-day on Saturdays, with a view to consult in an especial point of view, apart from personal considerations, the health and position of clerks and assistants in their employ.

The Memorialists therefore pray:

"That the Council of the Law Society of the United Kingdom will take steps forthwith, by application to the Lord High Chancellor of Great Britain and the Judges of the Realm, or otherwise, as they shall deem expedient, for establishing that the hour of two o'clock on Saturdays shall be considered henceforth to be the close of that day for conducting legal business in all its branches."

|                                       |                               |
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| Clarke & Morice                       | Mason & Withall               |
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| Hill, Heald, & Reeves               | J. E. Shearman & Slater           | Law, Tindal, & Hussey                         | Aldridge & Bromley                    |
| Symes, Teesdale, & Sandilands       | Thos. Hardwick Meriman            | Meredith, Reeve, & Co. Bell, Brodrick, & Bell | Chubb, Deane, & Chubb                 |
| Surr & Gribble                      | William Ley                       | William Murray                                | Cooper & Hodgson                      |
| Hughes, Kearsey, & Masterman        | Church & Langdale                 | N. C. Milne                                   | Mourilyan & Rowsell                   |
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| Venning, Naylor, & Robins           | Robinson & Geare                  | J. Shaw                                       | Langley & Gibbon                      |
| Wordworth, Greathead, & Blake       | Prichard & Collette               | Edward Bailey                                 | Williamson, Hill, & Williamson        |
| *Wilde, Rees, Humphry, & Wilde      | Danl. S. Bockett                  | Warry, Robins, & Burges                       | Watkin & Hooper                       |
| Thompson, Debenham, & Brown         | Dynes & Harvey                    | W. O. & W. Hunt & Elsdale                     | W. Samler                             |
| Johnston, Farquhar, & Leech         | Cox, Williams, & James            | Swift & Wagstaff                              | Newbon & Evans                        |
| Bischoff, Coxe, & Bompas            | Loveland & Tweed                  | Beisl, Read, & Pat-tison                      | Richard Sargent                       |
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| Thos. Loughborough                  | Plucknett & Adams                 | Smith & Alliston                              | John Dingwall                         |
| Jones & Blaxland                    | Clarke, Gray, & Woodcock          | Chas. Druce & Sons                            | Colley Smith, Hunter, & Gwatkin       |
| S. E. Donne                         | Boys & Tweedie                    | *Pickering, Smith, & Tompson                  | Tatham & Procter                      |
| Bell, Cowdell, & Boyes              | Harrisons                         | Maples, Maples, & Pearse                      | Woodhouse & Parkin                    |
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| Edward Willan, for self and Partner | Murray, Froom, & Co.              | Robt. Beckwith Towse                          | Thomas Brooksbank                     |
| Cardale, Iliffe, & Russell          | Fladgate, Clarke, & Finch         |                                               | Baxter, Rose, & Norton                |
| *Coverdale, Lee, & Purvis           | Edward Kemp                       |                                               | *White & Broughton                    |
| Thos. Wm. Flavell                   | Few & Co.                         |                                               |                                       |
| Abbott, Jenkins, & Abbott           | Bolding & Pope                    |                                               |                                       |
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| Coode, Kingdon, & Cotton            | Bennett & Stark                   |                                               |                                       |
| Lawrance, Plews, & Boyce            | Combe & Wainwright                |                                               |                                       |
| Tyrrell, Payne, & Layton            | Wing & Du Cane                    |                                               |                                       |
| Walter Prideaux                     | Barker, Bowker, & Peake           |                                               |                                       |
| John Francis                        | John Murray                       |                                               |                                       |
| Keddell & Smith                     | C. J. & H. Whishaw                |                                               |                                       |
| Holmer & Robinson                   | C. W. Lovell & Co.                |                                               |                                       |
| Scott, Tahourdin, & Shaw            | Nicholls & Doyle                  |                                               |                                       |
| Saml. Gale                          | W. & H. P. Sharp                  |                                               |                                       |
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|                                     | Taylor, & Collisson               |                                               |                                       |
|                                     | George Loader                     |                                               |                                       |
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|                                     | Clowes, Wedlake, & Clowes         |                                               |                                       |

\* This star denotes a member of the Council of the Law Society.

The Council have concurred in the object of the memorial, and have referred it to a Committee to consider the means of carrying it into effect.

## RETURNS RELATING TO COURTS OF LAW.

### QUEEN'S BENCH.

#### Actions Tried.

|                  |   |   |   |   |     |
|------------------|---|---|---|---|-----|
| In the year 1851 | . | . | . | . | 372 |
| — 1852           | . | . | . | . | 371 |
| — 1853           | . | . | . | . | 451 |

#### Criminal Informations Tried.

|                  |   |   |   |   |   |
|------------------|---|---|---|---|---|
| In the year 1851 | . | . | . | . | 1 |
| — 1852           | . | . | . | . | 1 |
| — 1853           | . | . | . | . | 4 |



**Indictments Tried on Certiorari.**

|                            |    |
|----------------------------|----|
| In the year 1851 . . . . . | 8  |
| — 1852 . . . . .           | 18 |
| — 1853 . . . . .           | 11 |
| H. G. CAMPBELL, Associate. |    |

1851.

|                                                     |     |
|-----------------------------------------------------|-----|
| Number of Rules for New Trials argued .             | 64  |
| — other Rules argued . . . . .                      | 176 |
| — Cases argued in Special Paper .                   | 81  |
| — Days out of Term the Court sat in Banco . . . . . | 11  |

1852.

|                                                     |     |
|-----------------------------------------------------|-----|
| Number for New Trials argued . . . . .              | 65  |
| — other Rules argued . . . . .                      | 125 |
| — Cases argued in Special Paper .                   | 64  |
| — Days out of Term the Court sat in Banco . . . . . | 7   |

1853.

|                                                     |    |
|-----------------------------------------------------|----|
| Number of Rules for New Trials argued .             | 64 |
| — other Rules argued . . . . .                      | 88 |
| — Cases argued in Special Paper .                   | 58 |
| — Days out of Term the Court sat in Banco . . . . . | 3  |

**Actions Brought.**

|                            | Number.       |
|----------------------------|---------------|
| In the year 1851 . . . . . | 21,221        |
| — 1852 . . . . .           | 21,625        |
| — 1853 . . . . .           | 22,994        |
|                            | <u>65,840</u> |

(Signed) FORTUNATUS DWARRIS.  
A. D. CROFT.  
R. GOODRICH.

**Rules Argued on Crown Side.**

|                            |     |
|----------------------------|-----|
| In the year 1851 . . . . . | 115 |
| — 1852 . . . . .           | 92  |
| — 1853 . . . . .           | 69  |

**Cases Argued in Crown Paper.**

|                            |    |
|----------------------------|----|
| In the year 1851 . . . . . | 66 |
| — 1852 . . . . .           | 44 |
| — 1853 . . . . .           | 48 |

Crown Office, CHAS. F. ROBINSON.  
9th June, 1854. WM. SAML. JONES.

**COMMON PLEAS.**

|                                                            | In the Years |        |        |
|------------------------------------------------------------|--------------|--------|--------|
|                                                            | 1851.        | 1852.  | 1853.  |
| Actions brought . . . . .                                  | 14,398       | 17,879 | 16,106 |
| Rules for New Trials argued . . . . .                      | 48           | 39     | 38     |
| Other Rules argued . . . . .                               | 203          | 177    | 83     |
| Cases argued in the Special Paper . . . . .                | 42           | 30     | 33     |
| Registration Appeals argued . . . . .                      | 6            | 8      | 1      |
| Days out of Term on which the Court sat in Banco . . . . . | 2            | 5      | 0      |

JOHN JERVIS, L. C. J., C. P.

|                                      |     |
|--------------------------------------|-----|
| In 1851.—Middlesex, Causes entered . | 264 |
| — London ditto . . . . .             | 285 |
| — Middlesex, Causes tried . . . . .  | 162 |
| — London ditto . . . . .             | 140 |
| — Middlesex, Causes withdrawn .      | 73  |
| — London ditto . . . . .             | 111 |
| In 1852.—Middlesex, Causes entered . | 209 |
| — London ditto . . . . .             | 241 |
| — Middlesex, Causes tried . . . . .  | 128 |
| — London ditto . . . . .             | 124 |
| — Middlesex, Causes withdrawn .      | 52  |
| — London ditto . . . . .             | 80  |
| In 1853.—Middlesex, Causes entered . | 307 |
| — London ditto . . . . .             | 321 |
| — Middlesex, Causes tried . . . . .  | 174 |
| — London ditto . . . . .             | 168 |
| — Middlesex, Causes withdrawn .      | 106 |
| — London ditto . . . . .             | 109 |

JOHN JERVIS, L. C. J., C. P.  
J. JERVIS, Associate.

**EXCHEQUER OF PLEAS.**

|                                                                                    |        |
|------------------------------------------------------------------------------------|--------|
| Number of Actions brought in 1851 .                                                | 29,828 |
| Ditto ditto 1852 . . . . .                                                         | 29,616 |
| Ditto ditto 1853 . . . . .                                                         | 33,414 |
| Number of Rules for New Trials in 1851 .                                           | 89     |
| Ditto ditto 1852 . . . . .                                                         | 79     |
| Ditto ditto 1853 . . . . .                                                         | 67     |
| Number of other Rules argued in 1851 .                                             | 285    |
| Ditto ditto 1852 . . . . .                                                         | 226    |
| Ditto ditto 1853 . . . . .                                                         | 127    |
| Number of Cases argued in the Special Paper in 1851 . . . . .                      | 70     |
| Number of Cases argued in the Special Paper in 1852 . . . . .                      | 69     |
| Number of Cases argued in the Special Paper in 1853 . . . . .                      | 53     |
| Number of days out of Term on which the Court sat in Banco in 1851 . . . . .       | 19     |
| Number of days out of Term on which the Court sat in Banco in 1852 . . . . .       | 11     |
| Number of days out of Term on which the Court sat in Banco in 1853 . . . . .       | 4      |
| W. F. POLLOCK, } Two of the Masters of the<br>R. E. JOHNSON, } Court of Eschequer. |        |

**Actions Entered for Trial.**

|                            | In London. | In Middlesex. |
|----------------------------|------------|---------------|
| In the year 1851 . . . . . | 280        | 583           |
| — 1852 . . . . .           | 323        | 534           |
| — 1853 . . . . .           | 417        | 662           |

**Actions Tried.**

|                            | In London. | In Middlesex. |
|----------------------------|------------|---------------|
| In the year 1851 . . . . . | 133        | 266           |
| — 1852 . . . . .           | 150        | 288           |
| — 1853 . . . . .           | 200        | 333           |

**Revenue Causes Tried.**

|                     |                                                 |
|---------------------|-------------------------------------------------|
| In the year 1851, 5 | } All Revenue Causes are<br>tried in Middlesex. |
| — 1852, 14          |                                                 |
| — 1853, 4           |                                                 |

HENRY POLLOCK, Associate.

## INCORPORATED LAW SOCIETY.

## ANNUAL REPORT OF THE COUNCIL.

June 27, 1854.

SINCE the last General Meeting of the Society the attention of the Council has been directed to various proposed legislative alterations, particularly in the Courts of Common Law, the Ecclesiastical Court, the Law of Property, and the principles of Equity in regard to Trustees and Executors. They have also had under their consideration the Rules of Taxation in Chancery: the Annual Certificate Duty; the Administration of Oaths by London Solicitors; the Fees of the Courts and Offices; Professional Usages in Conveyancing Matters; the Education and Examination of Articled Clerks; the proposed New Law Courts; numerous Complaints of Malpractice and Encroachments on the Profession; and, lastly, the General Affairs of the Society, its Library and Lectures, the Increase in the Number of Members, and the State of its Finances.

## I. LAW BILLS IN PARLIAMENT AND COMMISSIONS OF INQUIRY.

The Council have devoted much time and attention to the Bills in Parliament for the amendment of various parts of the Law and the Practice of the Courts. They have also attended carefully to the proceedings of the several Government Commissions and Parliamentary Committees on the state of the Law. No less than seven special Commissions are now, or recently were, in operation; and it may be proper, before remarking on the Bills which have been brought before the Legislature, to notice the scope of these Commissions of Inquiry. The Council have found it necessary, in considering the measures before Parliament, to study the various reports of the Commissioners and Parliamentary Committees, with the evidence taken before them relating to the objects for which they were appointed. The Council have on many occasions been invited by the Commissioners to communicate their views and suggestions, and to send members of their body to give evidence before the Commissioners. They have thus had an opportunity of promoting some important improvements in the administration of justice, of increasing the facilities for transacting professional business, and bringing under consideration the just claims and interests of the practitioners.

The Commissions of Inquiry still pending are as follow:—

1. The *Chancery Commissioners*, now engaged in an inquiry into the mode of taking evidence, and particularly as to the expense and delay in examining witnesses *voir dire*, on which several members of the Council have been examined before the Commissioners.

2. The *Common Law Commissioners*, whose Second Report has been followed by a Bill for carrying their recommendations into effect, the scope of which will be hereafter stated.

3. The *Bankruptcy Commissioners*, for inquiring into the Law of Bankruptcy, have long been engaged in examining witnesses on the proposed further alteration in that branch of the Law, regarding which they have just presented an elaborate report, including a statement of the Council in reply to the questions of the Commissioners.

4. The New Commissioners for considering the subject of the "*Registration of Titles with reference to the sale and transfer of Land.*" On this Commission are two solicitors, one of them a member of the Council, and the other a member of the Society. It is not expected that this inquiry can be concluded during the present Session, and consequently no alteration in this part of the Law can be made till the next Session.

5. The *Ecclesiastical Courts* inquiry was united with that of the Court of Chancery; and the joint Commissioners, after taking evidence on the subject, reported in favour of a Probate Court. This has been followed by a Bill materially varying from the recommendations of the Commissioners, and on which some observations will be presently made.

6. The *County Court Commissioners* have been long, and still continue, engaged in taking evidence on the inquiry into "the state and practice of the County Courts." At the request of the Commissioners, several members of the Society have been examined before them, and the Council have transmitted a statement and suggestions to the Commissioners, pointing out some of the means by which they think these Local Courts might be made more useful and satisfactory as Small Debt Courts, and suggesting a concurrent jurisdiction in the Superior Courts for debts not less than 5*l*.

7. The *Mercantile Law Commission*, from which the Council have just received an elaborate statement of the differences between the Laws of England and Ireland and those of Scotland, accompanied by a series of questions for consideration:

These Commissions comprehend as well the principles of Law as the course of procedure in all the Superior Courts in which, as the members of this Society are practitioners, the Council have felt it to be their duty vigilantly to watch the alterations proposed.

The Council now proceed to notice the Bills which have been submitted to the Legislature in the present Session.

1st. *Common Law Bills*.—There are several Bills in this department of jurisprudence, the most important of which is the second *Common Law Procedure Bill*. One of the principal changes proposed is the *examination of the parties before trial*. Under the Evidence Act, 14 & 15 Vict. c. 99, the parties are enabled to give evidence *at the trial* for themselves, or may be called by the opposite party, but this takes place after all the other expenses of preparing for trial have been incurred. It is now proposed that the plaintiff may, with his declaration, deliver interrogatories which the de-

fendant must answer, and the defendant, on pleading, may deliver interrogatories for the examination of the plaintiff. Thus in the earliest stage of an action, facts may be ascertained, or admissions made, which in numerous instances may put an end to litigation. Another alteration consists in empowering the Court, or a Judge, to direct an *arbitration before trial*. At present, when either party resists a reference, all the expense and delay are incurred in preparing for the trial, and then the Judge, especially in cases of complicated accounts, in effect compels a reference. It is also proposed that the parties shall be at liberty to discredit their own witnesses, and give evidence of contradictory statements made by an adverse witness,—that disputed handwriting may be proved by comparison with undisputed documents,—and where instruments are objected to on account of insufficient stamps, the trial may proceed upon payment into Court of the proper amount of duty and a penalty. The rule requiring the attesting witness to a deed to be called is also to be altered, except in certain cases, and ample provision is made for the discovery of documents, and for inspection of the property in question by the parties and their witnesses.

Another amendment (applying to the proceedings in an action, either before or after trial) is that of obtaining *evidence in support of a motion or summons*. Where persons refuse to make affidavits, the Court or Judge will be authorised to compel their attendance to be orally examined. This power will extend, not only to questions before the Court or a Judge at Chambers, but to references to the Master.

It is further proposed to authorise the Judge to *adjourn a trial* on certain terms and conditions. A second speech of counsel at the close of the evidence for each of the parties is also to be allowed, the right of reply remaining as at present. The jury are to be discharged at the expiration of twelve hours, unless they desire further time, but the verdict of eleven will be sufficient.<sup>1</sup>

Where a rule for a *new trial* is refused, the party may *appeal* to the Court of Error, and the notice of appeal is to be a stay of execution, provided bail be given, and error may be brought on a judgment given on a special case. The Bill also comprises an authority to the Superior Courts of Common Law to issue *injunctions*, like Courts of Equity, to restrain the repetition or continuance of a wrongful act or breach of contract.

It is also to be provided that a judgment debtor may be examined as to the debts due to him, and a Judge may order an attachment on such debts, and proceedings may be taken to sue the garnishee, or levy the amount due to the judgment debtor.

There are two other Bills applicable to the Common Law : the one to authorise the *service of the Process*, and enforce the *Judgments* of the

English Courts in *Ireland and Scotland* ; and the other to compel the attendance of witnesses from those parts of the empire, and extend the like powers to the Courts of Scotland over England and Ireland, and to the Irish Courts over England and Scotland. The Council see no objection to these measures. The power will still be continued of issuing commissions to examine witnesses, where the evidence can be satisfactorily obtained at less expense than by enforcing the personal attendance of the witness.<sup>2</sup>

Another Bill of some importance is that for assimilating, to a certain extent, the Law of England to that of Scotland, by dispensing, in the first instance, with actions on *Bills of Exchange*, and substituting a notarial protest, which is to be registered, and, after a certain time, operate as a judgment. For this purpose it is proposed that the holder of a dishonoured bill or promissory note may register the protest in the Court of Common Pleas, and obtain an order for the payment of the amount against any of the parties to the bill or note. The order is to be endorsed with the name and abode of an attorney, or a memorandum that the order has been served by the plaintiff in person.

The attorney, on demand, is to declare whether the order has been issued by his authority, and to declare the name and abode of his client ; and if the order be issued without the authority of an attorney, the proceedings are to be stayed. The order may be served in any county, and the party served with the order may apply to the Court to stay execution. Where proper grounds are disclosed, the Court may direct an issue in law or in fact to be tried ; but the party seeking to stay execution must furnish security for the debt and costs, unless the Judge shall be satisfied, from the nature of the defence, that such security is unnecessary. Considering that in undefended actions judgment may be speedily obtained at a moderate expense, the Council do not see any material advantage to be gained by this alteration of the law.

A Bill has also been introduced for amending the Law of *Arbitration*, under which the Judges are authorised to compel a reference in complicated matters. A provision to this effect being comprised (as already mentioned) in the Common Law Procedure Bill, it will probably be found more convenient to effect the object in that measure, than by a separate Act.

2nd. *The Law of Property and Conveyancing*.—The proposition of registering all deeds and instruments relating to land, which has so often been under the consideration of Parliament, has at length been superseded by a plan for *registering titles* in the name of the owner of the legal estate alone, leaving *cestui que trusts*, or others interested in the property, to protect themselves by caveat or inhibition, but without entering deeds of trust or incum-

<sup>1</sup> The Bill has since been altered, so that the unanimity of the jury will still be required.

<sup>2</sup> The Attendance of Witnesses' Bill has received the Royal Assent.

brances on the register. The Real Property Commissioners will of course consider this proposed substitute, and weigh well its probable effect on our abstruse and complicated system of Real Property Law. No act of the Legislature can be expected in the present Session, nor until the Commissioners have made their report. The long series of projects submitted to Parliament, not so much for the purpose of preventing any actual loss arising from the absence of a registry,—(the instances of the fraudulent suppression of deeds being exceedingly rare,)—but in the hope that a general register would ultimately simplify titles, and diminish the expense of their investigation, and the transfer of the property.

Connected with this object of cheapening the Conveyance of Real Property, a Bill has been again introduced for amending the Law of Real Property, by authorising and directing the taxing officer, in taxing any *Bill of Costs* for preparing any deed, will, or other instrument, to consider, not the length, but only the skill and labour employed, and the responsibility incurred in the preparation thereof.

Considerable doubts are entertained by the Council as to the practical operation of this measure, without some general rules for the guidance of the taxing officer, and they think the change, if effected, should be accompanied by some other important alterations, and that the proposed amendment should be effected by general orders, to be made from time to time by the Court of Chancery, and this course they have accordingly suggested to the Lord Chancellor.

It is well known that many frauds are committed against creditors by the secret execution of *Bills of Sale* of personal property, and to remedy the evil a Bill has been brought in, to render such transactions void, unless the instrument be registered in the same manner as warrants of attorney, within a limited time.\*

Some other Bills relating to the Law of Property have also been under consideration, namely, the Laws of *Mortmain*, and the disposal of Property for Charitable or Religious

Purposes. A Bill has also been introduced with regard to the *Personal Property of Married Women*, which stands on a different footing to that of Real Estates. It is proposed that married women may dispose of reversionary interests in personal estate and realise their rights to a settlement out of such estate in possession. The deeds for this purpose are to be acknowledged in the manner required by the *Fines and Recoveries' Act* for disposing of interests in land.

[To be continued.]

## SELECTIONS FROM CORRESPONDENCE.

### REMUNERATION TO SOLICITORS.

As evidence of the very unsatisfactory way in which solicitors are remunerated, I may remark that I have lately been engaged in preparing a very special instrument, which occupied me three times as much as would have been consumed in preparing a lease or common conveyance of 30 folios. Let a per-centage principle be adopted. R.

### COPYHOLDS.—MANOR OF KENNINGTON.

THERE are several inaccuracies in my letter in your Number of 29th July.

In the paragraph commencing,—“Suppose the copyholder,” &c.,—instead of “confiscation of two-thirds,” read “three-fourths;” also, in the last line but two, substitute “three-fourths” for “two-thirds.”

In the next paragraph for “extracted two-thirds,” read “three-fourths;” and for “only one-third left,” read “only one-fourth” left. After “that is to say,” substitute “80l.” for “100l.”; and three lines lower down, instead of “nearly,” add “more than” half his mortgage-money.

The alterations arose from my formerly estimating the copyhold at 26 years’ purchase on the original rental, which, on consideration, I do not think worth more than 24 years, if so much. I readily concede the full benefit of the thorough confiscation to our excellent friend “Fair Play.”

8th August, 1854.

R. L.

\* This Bill has received the Royal Assent.

## ATTORNEYS TO BE ADMITTED.

Michaelmas Term, 1854.

Queen's Bench.

[Concluded from page 269.]

### Clerks' Names and Residences.

Mossop, Charles, 8, Wilmington-square . . .  
Mounsey, John Giles, Carlisle . . .  
Newman, William, 16, Cecil-street, Strand; New Bridge-street; and Yeovil . . .  
Newsham, Henry, jun., Manchester . . .  
Osborne, Alfred, 4, Manchester-ter., Liverpool-road; Goswell-road; and Ashborne . . .  
Parker, Thomas, 37, Baker-street, Portman-sq.; and Abbey-road . . .

### To whom Articled, Assigned, &c.

C. Hanslip, Hatton-garden; J. Stuart, Gray's-inn; R. Mossop, Long Sutton . . .  
G. G. Mounsey, Carlisle . . .  
E. Newman, Yeovil; W. E. Oliver, New Bridge-street . . .  
T. P. Canliffe, Manchester . . .  
J. Brittlebank, Ashborne; G. G. Brittlebank, Ashborne . . .  
T. Burgoyne, Oxford-street; T. Parker, Lincoln's-inn-fields . . .

| <i>Clerks' Names and Residences.</i>                                                      | <i>To whom Articled, Assigned, &amp;c.</i>              |
|-------------------------------------------------------------------------------------------|---------------------------------------------------------|
| Parrott, Thomas, 37, Barton-crescent; Bedford-row; and Stony Stratford                    | J. Parrott, Stony Stratford                             |
| Parsons, Charles William, 19, Storr-street, Bedford-square; and Alfred-place              | F. J. Jessopp, Derby                                    |
| Pattison, Henry John, 74, Oxford-street                                                   | H. B. Wedlake, King's-bench-walk                        |
| Paull, Henry, 12, Lincoln's-inn-fields                                                    | F. A. Trenchard, Teanton                                |
| Pemberton Loftus Leigh, Chester-square, Pimlico; and Whitehall-place                      | E. L. Pemberton, Whitehall-place                        |
| Perkins, Frederick, 15, Regent-square; and York                                           | R. Perkins, York                                        |
| Perrin, Jonathan, 22, Stanhope-street, Hampstead-road; Arlington-street; and Temple Cloud | W. R. Mogg, Temple Cloud                                |
| Perry, George, 14, Everett-street, Soley-terrace; and Stourbridge                         | R. Pries, Stourbridge                                   |
| Pigott, William, Ely, Cambridge                                                           | J. P. Lawrence, Cambridge; F. Barlow, Cambridge         |
| Plaskitt, Joseph, 29, Walton-street, Brompton; and Louth                                  | C. Ingolby, jun., Louth                                 |
| Player, Joseph Norton, 9, Turrett-grove, Lark-hall-lane                                   | C. N. Cole, Adelphi-terrace                             |
| Plunkett, Henry, 3, Bridge-cottages, Walworth; and Stourbridge                            | H. Corser, Stourbridge                                  |
| Potter, Henry, Guildford                                                                  | T. A. Curtis, Guildford                                 |
| Powell, William Henry, King's Norton                                                      | J. Powell, Birmingham                                   |
| Pritchard, Charles J. Collins, 15, Eccleston-street South, Pimlico; and Bristol           | J. F. Fussell, Bristol                                  |
| Randall, John Henry, Binfield, near Bracknell                                             | G. A. Crawley, Whitehall-place                          |
| Remington, George, 18, Montague-street, Russell-square; and Ulverstone                    | H. Remington, Ulverstone                                |
| Richards, George Charles, 41, Downham-road, Islington; Droitwich                          | J. Holyoake, Droitwich                                  |
| Richardson, John, 5, Robert-terrace, Chelsea; and Girton                                  | E. Foster, Cambridge                                    |
| Robinson, Edward, 2, Burton-crescent; Milton-street; and Clifton                          | D. Russell, York                                        |
| Salt, William, Shrewsbury                                                                 | G. M. Salt, Shrewsbury                                  |
| Sanders, Francis, 21, Lower Calthorpe-st.; and Birmingham                                 | W. J. Beale, Birmingham                                 |
| Sansom, Samuel, 31, Richmond-road, Barnsbury-park                                         | J. Burton, Queen's-square                               |
| Seath, John, jun., 14, Queen's-square, Bloomsbury                                         | R. Prall, Rochester                                     |
| Sharp, Edward, 6, South-square, Gray's-inn; and Wandsworth                                | W. Sharp, Verulam-buildings                             |
| Sheppard, Henry Richard, 23, Hanover-street, Islington; and Wells                         | R. Sheppard, Wells                                      |
| Shew, William Harford, 16, Lonsdale-square                                                | S. Moores, Warnford-court                               |
| Shirreff, William Moore, 7, Lincoln's-inn-fields                                          | C. J. Shirreff, Lincoln's-inn-fields                    |
| Simms, Frederick, 7, Featherstone-buildings; Frederick-street; and Brownlow-street        | G. Hodgkinson, Wirksworth                               |
| Smith, Henry John, 5, Everett-st., Russell-sq.                                            | J. T. Tenney, Kingston-upon-Hull                        |
| Snow, Henry, 26, Percy-circus, Pentonville; and New Sleaford                              | M. P. Moore, New Sleaford                               |
| Soars, Benjamin, 32, Great George-st., Westminster; and South-square                      | S. Carter, Birmingham                                   |
| Stead, Richard William, Manchester                                                        | T. P. Bunting, Manchester                               |
| Stephens, Thomas Henry, 22, Everett-st., Russell-square; and Maidstone                    | J. C. Stephens, Maidstone                               |
| Stephenson, Thomas, 33, Kenton-street, Brunswick-square; and Whitby                       | A. Stephenson, Whitby                                   |
| Tandy, Thomas, 4, Spencer-street, Clerkenwell; and Gerrard-street                         | H. Hyde, Ely-place                                      |
| Taylor, George Whitfield, 4, Croom's-hill, Greenwich; Wharton-street; and Bolton-le-Moors | W. George, Bradford                                     |
| Thompson, James, jun., Essex-place, George-road, Dalston; and Hunslet, near Leeds         | H. Nelson, Leeds; A. Turner, Aldermanbury               |
| Tibbitts, John Markham, 6, Foley-terrace, Pentonville; and Northampton                    | A. B. Markham, Northampton                              |
| Tocque, Geo. Richard Fletcher, 41, Downham-road, Islington; and Gracechurch-street        | C. Leake, Witney; J. W. Flower, Gracechurch-st.         |
| Tombs, Henry Coggan, Droitwich                                                            | S. Tombs, jun., Droitwich                               |
| Trevenen, William, 11, Essex-street, Strand; and 8, Stanhope-street, Mornington-crescent  | P. Nelson, Essex-street                                 |
| Tucker, Edward, Bath                                                                      | W. C. Gill, Bath                                        |
| Tuke, Henry George, 27, Upper Southwick-street, Hyde-park                                 | C. Druce, Billiter-square; R. N. Bennett, Lincoln's-inn |

**Clerks' Names and Residences.****To whom Articled, Assigned, &c.**

|                                                                                                  |                                                             |
|--------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| Underhill, James Edward, Wolverhampton . . .                                                     | H. Underhill, Wolverhampton                                 |
| Walker, George, 1, Southampton-street, Fitzroy-sq.                                               | J. Birt, Southampton-street, Fitzroy-square                 |
| Walls, James Gordon, Millfield-lane; Highgate-rise . . . . .                                     | W. A. Walls, Bloomsbury-square; E. F. Barton, Chancery-lane |
| Walter, Alfred, Birmingham . . . . .                                                             | G. Edmonds, Birmingham                                      |
| Watts, Henry Shorland, 22, Stanhope-st., Hampstead-road; and Yeovil . . . . .                    | H. M. Watts, Yeovil                                         |
| Whatman, C. M. Cornwallis, 2, River-street, Putney; and Caversham . . . . .                      | J. J. Blandy, Reading                                       |
| Whitgreave, Thomas John, 37, Hart-st., Bloomsbury; and Walsall . . . . .                         | S. Wilkinson, jun., Walsall                                 |
| Williams, George St. Swithin, articled as George Williams, Highgate-rise; Kentish-town . . . . . | G. F. Druce, Oxford; E. B. Randall, Gray's-inn-place        |
| Wooldbridge, Charles, 3, Vernon-place, Bloomsbury-square; and Romsey . . . . .                   | C. J. Tylee, Romsey                                         |
| Wysyt, Joseph, 10, Charles-street, Trevor-square, Knightsbridge . . . . .                        | G. Atkinson, Bedford-row                                    |

**Added to the List pursuant to Judge's Orders.**

|                                                                                                 |                                                         |
|-------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| Aston, Charles, Camp-street; and Cross-street, Higher Broughton, near Manchester . . . . .      | J. P. Ashton, Higher Broughton, near Manchester         |
| Fox, Thomas, 2, Sidmouth-street, Gray's-inn-road; and Dover . . . . .                           | E. Elwin, Dover                                         |
| Haines, Wm. Tertius, 14, Manchester-buildings, Westminster; and Harborne . . . . .              | W. Haines, Birmingham; F. J. Welch, jun., Birmingham    |
| Jackson, Henry, 5, Victoria-terrace, Stockwell; and Aldridge, near Walsall . . . . .            | W. H. Duignan, Walsall                                  |
| Lee, Frederick, 11, Millman-street; Wells-street, Gray's-inn-road . . . . .                     | T. Parker, 18, St. Paul's Churchyard                    |
| Leslie, George, Newton Bushell . . . . .                                                        | P. Pearce, Newton Abbott; W. Jennings, Lime-street      |
| Lomer, Walter Abraham, 59, Doughty-street, Bedford-row; and Southampton . . . . .               | D. S. Morice, Coleman-street                            |
| M'Gowen, William Thomas, Liverpool . . . . .                                                    | Williams and M'Leod, Temple; W. Shuttleworth, Liverpool |
| Oliver, George James, 13, Lawrence-lane, Cheap-side . . . . .                                   | H. Lloyd, 36, Milk-street, Cheap-side                   |
| Scholes, Charles Robert, jun., Dewsbury . . . . .                                               | C. R. Scholes, sen., Dewsbury; M. Kidd, Holmfirth       |
| Thompson, Charles Robert, 118, Great Russell-st.; and Kelawick-house, near Whitehaven . . . . . | W. Perry, Whitehaven; W. H. Ashurst, 6, Old Jewry       |
| Webster, John, Whitehaven . . . . .                                                             | J. Musgrave, Whitehaven                                 |

**NOTES OF THE WEEK.****PROROGATION OF PARLIAMENT.**

THIS day, the 12th of August, has been announced by a Supplement in the *London Ga-*

*zette*, as the day fixed for the prorogation of Parliament. Unless something very extraordinary should occur during the War with Russia, we may expect that it will not re-assemble till next February.

**RECENT DECISIONS IN THE SUPERIOR COURTS.****Lord Chancellor.**

*Londonerry v. Fane.* Aug. 5, 1854.

**SERVICE OF LETTERS MISSIVE ON PEER OUT OF JURISDICTION.**

*Order on motion under the 2 Wm. 4, c. 33, for leave to serve letters missive on a peer in Ireland, and if no appearance were entered within eight days, a printed copy of the bill to be served under the 15 & 16 Vict. c. 86, s. 3.*

THIS was an application under the 2 Wm. 4, c. 33, for leave of the Court to serve letters missive in this suit on Lord Portarlington and the Marquis of Drogheda, who were in Ireland, and that if no appearance were entered within eight days, a printed copy of the bill might be served on them, in accordance with s. 3 of the 15 & 16 Vict. c. 86.

**C. Hall in support.**

The Lord Chancellor made the order as asked.

**Lords Justices.**

*In re Booth.* August 2, 1854.

**TRUSTEES' ACT, 1850.—LUNATIC TRUSTEE.—JURISDICTION.**

*New Trustees were appointed under the 13 & 14 Vict. c. 60, s. 32, in the stead of one who had died and of the other who was of unsound mind, on petition in lunacy.*

*Quære, whether the Vice-Chancellor has jurisdiction to appoint in the stead of a lunatic trustee.*

THIS was a petition under the 13 & 14 Vict. c. 60, s. 32, for the appointment of new trus-

tees in the stead of one who had died and of another who was of unsound mind, but not so declared by commission. The Vice-Chancellor Kindersley had, in *In re Good Intent Benefit Society*, reported *ante*, p. 271, declined to make the order on the ground that the petition should have been presented to this Court in lunacy.

*Hallett and Cotton* for the several parties.

The Lords Justices, without deciding whether the Vice-Chancellor had no jurisdiction, made the order as prayed.

### Master of the Rolls.

*Attorney-General v. Pretyman.* Aug. 4, 1854.

CHARITY LEASE.—IMPROVED RENT.—OUTLAY OF LESSEE.

*Upon the expiration of a charity lease, an increased rent was offered by another person, and it appeared that the existing lessee had expended a large sum in improvements on the faith of the lease being renewed: Held, that he was entitled to have the option of continuing at the higher rent, or of having an allowance made for his outlay.*

THIS was a petition on behalf of the Master of the Mere Hospital, Lincoln, for leave to grant a lease of a farm belonging to the charity to a Mr. Harrison. It appeared that the recent lessee had paid a rent of 800*l.* a year, but had laid out about 2,000*l.* in improvements on the faith of obtaining a renewal of his lease. Mr. Harrison was willing to give a rent of 1,000*l.* a year.

R. Palmer and Shapter in support; Wickens for the present lessee; Terrell for the Attorney-General.

The Master of the Rolls said, that the present lessee must be allowed the option of taking the farm at the increased rent, and that if he did not continue lessee he must have compensation for his outlay.

*Edwardes v. Batley and others.* July 18, 1854.

EQUITY JURISDICTION IMPROVEMENT ACT.—ORDER OF REVIVOR.—ADMISSION OF ASSETS BY REPRESENTATIVE OR ACCOUNT.

*Held, that upon the death, in an administration suit by an executor and trustee against the co-executor and the parties beneficially interested, of such defendant co-executor intestate, the order to revive under the 15 & 16 Vict. c. 86, s. 52, against his personal representative, will direct the admission of assets, or in default an account.*

In this administration suit by an executor and trustee against the co-executor and the parties beneficially interested, it appeared that a supplemental bill had been filed upon the death of the defendant intestate, against his personal representative, seeking the admission of assets, or in default an account.

The Master of the Rolls said, that the object

now sought might be obtained by an order of revivor under the 15 & 16 Vict. c. 86, s. 52,<sup>1</sup> and in future that course must be adopted, but that as the plaintiff might have been misled by the decision of the *Dean, &c., of Ely v. Edwards*, 22 Law J., N. S., Ch., 629, the order would be made in the present case.

*Shaw v. Hardingham and others.* July 22, 1854.

EQUITY JURISDICTION IMPROVEMENT ACT.—SALE BY EXECUTORS IN FORECLOSURE CLAIM.

*In a foreclosure claim a motion was granted under the 15 and 16 Vict. c. 86, s. 55, for a decree for the sale of real estate by the executors of the mortgagor's will, with a power of sale on the death of a tenant for life, and held that the persons entitled upon the determination of the life estate were sufficiently represented by the executors under s. 42, rule 9.*

THIS was a motion in this claim for foreclosure of a mortgage, under the 15 & 16 Vict. c. 86, s. 55,<sup>2</sup> for a decree for sale on the defendants, who were the executors under the mortgagor's will. There was a power of sale upon the death of the tenant for life, who was made a defendant.

W. Hislop Clarke, in support, referred to s. 42, rule 9, which enacts, that "in all suits concerning real or personal estate which is vested in trustees under a will, settlement, or otherwise, such trustees shall represent the persons beneficially interested under the trust, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate;

<sup>1</sup> Which enacts that "upon any suit in the said Court becoming abated by death, marriage, or otherwise, or defective by reason of some change or transmission of interest or liability, it shall not be necessary to exhibit any bill of revivor or supplemental bill in order to obtain the usual order to revive such suit, or the usual or necessary decree or order to carry on the proceedings; but an order to the effect of the usual order to revive, or of the usual supplemental decree may be obtained as of course upon an allegation of the abatement of such suit, or of the same having become defective, and of the change or transmission of interest or liability."

<sup>2</sup> Which enacts, that "if after a suit shall have been instituted in the said Court, in relation to any real estate, it shall appear to the Court that it will be necessary or expedient that the said real estate, or any part thereof, should be sold for the purposes of such suit, it shall be lawful for the said Court to direct the same to be sold at any time after the institution thereof, and such sale shall be as valid to all intents and purposes, as if directed to be made by a decree, or decretal order, on the hearing of such cause."

and in such cases it shall not be necessary to make the persons beneficially interested under the trusts parties to the suit; but the Court may, upon consideration of the matter, on the hearing, if it shall so think fit, order such persons, or any of them, to be made parties."

The Master of the Rolls held that the parties entitled upon the determination of the tenancy for life were sufficiently represented by the executors, and made the decree as sought.

**Vice-Chancellor Kindersley.**

*English v. Campbell.* July 29, 1854.

**SUBSTITUTED SERVICE OF SUBPENA FOR COSTS.**

*An order was made, that service of the subpoena for costs, at the London address of the defendant and on his solicitors, should be deemed good, where it appeared the answer was sworn at Carlisle, and that communications left at such London address were duly forwarded to the defendant.*

THIS was a motion for an order, that service of the subpoena for costs in this suit at the address given by the defendant in London, and on his solicitors, might be deemed good service. It appeared that the answer had been sworn at Carlisle, and that communications left at the London address were duly forwarded to the defendant.

*Freeling* in support, referred to *Danford v. Cameron*, 8 Hare, 329, in which *Hunter v. —*, 6 Sim. 429, is cited.

The Vice-Chancellor, upon the authority of the case cited, made the order accordingly.

*In re Forster's Trust.* Aug. 2, 1854.

**EXAMINATION OF WITNESSES BEFORE SPECIAL EXAMINER.**

*An application was granted for the issue of a subpoena for the examination of witnesses before the special examiner, in the counties of Northumberland and Durham, where the parties and their solicitors were resident.*

THIS was an application for the issue of a subpoena for the examination of witnesses before the special examiner in the counties of Northumberland and Durham.

*Glaspe and Bates* in support, referred to the 15 & 16 Vict. c. 86, s. 31.<sup>1</sup>

The Vice-Chancellor said, that under ordinary circumstances examinations should take place in London, but that as the parties and their solicitors were resident in the counties in question, the application would be granted—all parties interested to give evidence before the special examiner.

<sup>1</sup> Which enacts, that "all witnesses to be examined orally under the provisions of this Act shall be so examined by or before one of the examiners of the Court, or by or before an examiner to be specially appointed by the Court."

**Vice-Chancellor Stuart.**

*Atlee v. Hooks.* June 9, 1854.

**PAYMENT OF LEGACY TO WIFE OF CONVICT.—CONSENT OF CROWN.**

*A sum of money had been carried to the separate account of a married woman in an administration suit: Held, that she was entitled to be paid over the same on her receipt where her husband had been transported for life before the testatrix, under whose will she took, died, without the Attorney-General being served.*

THE testatrix in this administration suit, by her will appointed the defendant, Mrs. Potley, one of her residuary legatees, and a sum of cash had been carried in the cause to her account. This petition was now presented for payment of the amount to her upon her receipt, her husband having been transported for life before the death of the testatrix.

*Chichester*, in support, cited *Newsome v. Bowyer*, 3 P. Wms. 37.

The Vice-Chancellor made the order, and without service on the Attorney-General.

*Kane v. Reynolds.* June 10, 1854.

**CROWN.—RIGHT TO COSTS IN EQUITY.**

*Held, that the rule at law, that the Crown neither pays nor receives costs, does not prevail in equity.*

*Upon the Solicitor of Treasury, therefore, taking possession of the personal estate of an intestate under letters of administration which were afterwards revoked and granted to the next of kin, held that he was not entitled to deduct the amount of his costs of a suit by the next of kin to recover the property.*

IT appeared that upon the death of Mr. Thomas Kane, intestate, letters of administration were obtained by the Solicitor of the Treasury on behalf of the Crown, and he had received certain sums of money, part of the estate. The letters had afterwards been revoked and granted in July, 1853, to the plaintiff who now filed this claim for an account, and for payment over of the sums received by the Solicitor of the Treasury.

*Bacon and Selwyn* for the plaintiff; *Wickens* for the Solicitor of the Treasury, claimed to deduct the amount of his costs; *Sheffield* for other parties.

The Vice-Chancellor said, that the rule at law that the Crown neither pays nor receives costs did not exist in equity; *Attorney-General v. Ashburnham*, 1 Sim. & S. 394-7,<sup>1</sup> and that the plaintiff was entitled to a decree for payment without such deduction.

**Vice-Chancellor Wood.**

*Man v. Fuller.* June 5, 1854.

**LEGACY, WHETHER ADDITIONAL.—MISDESCRIPTION.**

*A testator gave "the interest of two thousand to G. S., and at his death to his children,"*

<sup>1</sup> And so: *Moggridge v. Thackwell*, 7 Ves. 88.



and in a subsequent part of the will the sum of 1,000*l.* "in addition to one thousand before mentioned." There were other legacies of "pounds sterling," and no sums of stock: Held, that G. S. was entitled to two thousand pounds sterling for life, and on his death the capital to go among his children, and to the one thousand pounds absolutely.

A QUESTION arose in this suit as to the construction of the will of a testator, whereby he gave "the interest of two thousand to Geo. Sergeant, and at his death to his children," and after giving two legacies of one thousand pounds, and one of two thousand pounds to certain parties named he gave the sum of one thousand pounds, to George Sergeant "in addition to one thousand before mentioned."

*Rolt and Baggallay* for the plaintiff; *Eddis* for the executor; *C. M. Elderton, Messiter, Fane, J. Sidney Smith, H. Cadman Jones, and Reilly* for other parties.

The Vice-Chancellor said, that as all the previous legacies were of pounds sterling, and there was no stock, the gift of the "2,000*l.*" clearly meant pounds sterling, and gave an absolute gift of the capital to the children on their father's death. The gift of the additional legacy of 1,000*l.*, referring to the former as 1,000*l.*, did not raise an inference that the testator only intended to give 2,000*l.*, nor did it cut down the former sum: *Gordon v. Hoffmann*, 7 Sim. 29, and he was therefore entitled to the 2,000*l.* for life, and to the other absolutely.

*Bone v. Augier.* July 6, 1854.

SUIT TO ENFORCE EQUITABLE MORTGAGE.  
—SUBSTITUTED SERVICE OF COPY BILL ON PERSON IN POSSESSION.

*Substituted service under the 15 & 16 Vict. c. 86, s. 5, of the copy bill to enforce an equitable mortgage, on the defendant's son-in-law who was in possession—the defendant being in New South Wales—was refused, where it was not shown he acted as the defendant's agent in respect of the property and his possession might be adverse.*

THIS was a motion for an order under the 15 & 16 Vict. c. 86, s. 5,<sup>1</sup> to substitute service of the copy bill to enforce an equitable mortgage on certain property belonging to the defendant, who was in New South Wales, upon his son-in-law, who was in possession.

<sup>1</sup> Which enacts, that "the service upon any defendant of a printed copy of a bill of complaint, or of a claim in the said Court, shall be effected in the same manner as service of a writ of subpoena to appear to and answer a bill of complaint is now effected, save only that it shall not be necessary to produce the original bill or claim, which will be on the files of the Court; provided that the Court shall be at liberty to direct substituted service of such printed bill or claim, in such manner and in such cases as it shall think fit."

*Shebbeare* in support.

The Vice-Chancellor said, that as no authority was shown to the son-in-law to act as the defendant's agent with respect to the property, and his possession might be adverse, the motion must be refused.

*Hemming v. East.* July 12, 1854.

EVIDENCE.—AFFIDAVIT FILED AFTER CERTIFICATE OF CHIEF CLERK.

*The Chief Clerk certified in favour of a deed of assignment to the defendant, and that he was entitled to set-off the amount of a debt due from the plaintiffs, and thereby assigned, against the purchase-money of certain property bought by him: Held, that an affidavit afterwards filed on behalf of the plaintiffs, showing the assignment to be a mortgage and discharged, could not be received on further consideration upon the certificate, but with leave to counsel to state the facts, in order to an inquiry if necessary.*

IN this suit which now came on for further consideration upon the certificate of the Chief Clerk finding in favour of a deed of assignment to the defendant, and that he was entitled to set-off the amount of a debt due from the plaintiffs, and thereby assigned, against the purchase money of certain property bought by him, an affidavit was filed on behalf of the plaintiffs, showing that the assignment amounted to a mortgage and had been discharged.

The Vice-Chancellor said, that the affidavit was filed too late and could not be admitted, but that the facts might be stated by counsel, in order that an inquiry might be directed, if proper.

*Rolt and Jolliffe* for the plaintiffs; *Willcock, and Deere Salmon* for the defendants.

*Clarke v. Gill.* July 24, 1854.

EXAMINATION OF WITNESSES IN LONDON.  
—RIGHT OF MEDICAL MAN TO COMPENSATION FOR LOSS OF TIME.

*Held, that a medical man whom it was proposed to examine before the examiner, was entitled to compensation for loss of time, although he resided in Bryanstone Square and within the bills of mortality.*

ON this motion for an injunction, an order had been made for the examination of witnesses, but it appeared that a medical gentleman, whom it was proposed to examine, refused to be sworn until payment was made as compensation for his loss of time.

*Roxburgh* now applied for the direction of the Court, and stated the witness resided in Bryanstone Square and within the bills of mortality, referring to the 5 Eliz. c. 9, s. 12.

The Vice-Chancellor said, that the witness was entitled to receive compensation before being sworn.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

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SATURDAY, AUGUST 19, 1854.
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### RESULTS OF THE SESSION OF 1854.

According to custom, we proceed to sum up the results of the Session of Parliament which closed on the 12th instant. In the first great outbreak of Law Reform, twenty-four years ago, this work was commenced. It has ever since been our duty to bring under the notice of the Profession, week by week, the projects which have been devised or completed, not only by the distinguished personage who led the way, but the numerous corps which followed in his train. At that time the only periodical devoted to legal subjects was the *Law Magazine*, which was edited by a young member of the Bar of great ability, and published quarterly. It appeared to the originators of the *Legal Observer* that the time had arrived for establishing a medium of communication between Attorneys and Solicitors throughout the kingdom; but the work, though chiefly devoted to their interests, included within its scope a review of all matters, whether parliamentary or judicial, in any respect affecting the Profession at large. It was especially designed to call immediate attention to all projected alterations in the Law and Practice, and to afford a channel of communication for conveying the views of the members of the Profession to their brethren, and discussing the merits of the various proposed changes which rapidly succeeded each other.

We have again, therefore, to execute our annual task, and recall to the attention of our readers, in a collective form, the several amendments or alterations of the Law which have taken place during the last seven months, the details of which have been laid seriatim before them, and from time to time discussed in these pages.

VOL. XLVIII. No. 1,380.

In the first place it may not be uninteresting briefly to advert to the record of her Majesty's Speech on opening the late Session of Parliament, particularly in regard to the measures which were then intended to be submitted to Parliament. They were, 1st, the Bills for transferring from the Ecclesiastical to the Civil Courts the cognizance of Testamentary and of Matrimonial Causes;—2nd, for giving increased efficiency to the Superior Courts of Law;—3rd, the Enactments relating to the Settlement of the Poor, in order more effectually to promote the freedom of Labour in unison with the interests of Capital;—4th, Amendments in the Laws relating to the representation of the People, together with Measures for preventing Bribery and Corrupt Practices at Elections.

On closing the Session last Saturday, her Majesty said:—"I rejoice to perceive that Amendments in the Administration of the Law have continued to occupy your attention, and I anticipate great benefit from the improvements you have made in the Forms of Procedure in the Superior Courts of Law." After observing on the removal of the last legislative restriction upon the use of foreign vessels, her Majesty says:—"You have also revised and consolidated the whole Statute Law relating to Merchant Shipping." The Speech also states that a willing assent was given to the measure for the prevention of *Bribery* and of *Corrupt Practices* at Elections, and a hope was expressed, "that it might prove effectual in the correction of an evil which, if unchecked, threatened to fix a deep stain upon our representative system." The Act for the better government of the University of Oxford, and the improvement of its constitution, was also noticed, "trusting that it will tend greatly to increase the

usefulness, and to extend the renown of this great seminary of learning."

Classifying the Bills which have passed both Houses and received the Royal Assent, we may notice—

I. The most important Act of the Session which received her Majesty's personal sanction on the 12th instant,—the Second *Common Law Procedure Act*. The Speech suggested to the Queen does not sufficiently characterise the full scope of the measure, for it effects improvements not only in the *Forms of procedure*, but in the jurisdiction of the Superior Courts of Common Law and the means it affords for obtaining justice,—facilitating and expediting the proceedings and diminishing the expense of the suitors. Thus the Act will enable the Judge to try questions of fact, by consent, without a jury;—to order cases of complicated accounts to be forthwith referred to arbitration;—the parties also may be examined before trial; and a full discovery of documents obtained;—trials may be adjourned;—affirmations may be received instead of oaths;—restrictions relaxed in the cross-examination of witnesses and the contradiction of a party's own witness;—proof of handwriting by comparison admitted;—documents insufficiently stamped receivable on payment of duty and penalty;—appeals on refusal of a new trial;—oral examination of witnesses on motions and summonses;—power to issue injunctions;—the examination of judgment debtors to discover their assets; and to attach or take the same in execution. These and other amendments of the Law place this Act in the foremost rank of the successful labours of the Session.

Under this head of Common Law, may also be noticed the *Witnesses' Act*, under which witnesses in Ireland or Scotland may be compelled to attend and give evidence in England, and witnesses here to give evidence in the Courts there; but reserving the power of examining them before Commissioners. In this department may also be classed the Act for registering *Bills of Sale of Personal Property*, like Warrants of Attorney, in the Court of Queen's Bench.

These are the three Acts relating to the course of proceeding in the Superior Courts of Common Law; but to which may be added, as affecting the local Courts, the Act for extending the Right of Appeal in County Courts to cases heard by consent in those Courts; and the Manchester Court of Record Act enlarging the Jurisdiction of the Court and amending its practice.

II. *Equity*. In this department we have to notice only two Acts,—viz., the Court of Chancery Act, "to make further provision for the more speedy and efficient despatch of business," by appointing additional temporary clerks and accountants to wind up the matters depending in the remaining *Masters' Offices*, and in case of need to call in the aid of the Solicitor to the Suitors' Fund.

The other Act extending the jurisdiction of the Court of Chancery of the County *Palatine of Lancaster* against persons residing out of its jurisdiction, and transferring appeals to the Lords Justices in Chancery instead of the Judges of Assize.

III. The *Bankruptcy Act* is a very small instalment of the alterations suggested by the Commissioners in their recent report; whilst the continuance of the office of broker is in opposition to their recommendation, and of the evidence taken before them. The present Act enables the Lord Chancellor to diminish the expense of the establishment by not filling up the present or future vacancies; and it provides that a petitioning trader must show that his assets amount to 150*l*.

IV. A short act has also passed for taking evidence in the *Ecclesiastical Courts vivâ voce*; and an Act authorising the appointment of Commissioners to administer Oaths and take Declarations, &c., relating to proceedings in the *Admiralty Court*, and providing that the Commissioners for administering oaths in Chancery may also take affidavits, declarations, &c., in proceedings in the Admiralty Court.

V. In regard to the Law of Property and Conveyancing, several Bills have received the royal assent. 1. The *Real Estate Charges' Act*, directing that in case of intestacy the heir shall not be entitled to have the incumbrances on the estate paid out of the personal property; and where a testator makes a will and directs his estate to be sold, and does not otherwise direct, the land shall be deemed to be personal estate. 2. The Act to remove doubts concerning the due *Acknowledgment of Deeds* by Married Women, whereby the deeds already acknowledged are rendered valid; although one or both of the Commissioners may have been interested in the transaction, with certain exceptions in cases wherein proceedings are pending; but authorising the Court of Common Pleas to make rules for preventing Commissioners who are interested from taking acknowledgments. 3. Several Acts for the Inclosure of Lands

have been passed. 4. Also an Act to Facilitate the Sale and Transfer of *Incumbered Estates* in the *West Indies*, under which three Commissioners are to be appointed, the chief to reside in England, and power is given to appoint local Commissioners. 5. The Management of *Episcopal* and *Capitular Estates*. 6. The Arrangement of *Turnpike Trusts*. 7. The total repeal of the *Usury* Laws, saving transactions previous to the Act, providing that the legal or current rate of interest now payable on any contract shall mean the same as if this Act had not passed; and that the Act shall not affect the Law of Pawnbrokers.

VI. The Act to amend the Law relating to the *Stamp Duties*, whereby a new scale is fixed for inland and foreign bills and notes; also on leases for terms exceeding 35 years, regulated by the amount of rent, and on duplicates or counterparts; with provisions as to adhesive stamps on bills and bankers drafts;—repealing the exemption from receipt stamp duty on letters of acknowledgment;—directing that deeds made for several valuable considerations shall be chargeable in respect of each;—and indemnifying parties for omitting to state the full purchase money in assignments on the sale of good will.

VII. The Consolidation and Amendment of the Law relating to *Merchant Shipping* is a great and important work. The Act extends to upwards of 200 folio pages, and the analysis occupies upwards of 20 more.

VII. Regarding the *Criminal Law*, the Acts which have passed relate to the removal of prisoners, the prosecution of youthful offenders, and the suppression of gaming-houses.

IX. Several other Acts of great public importance, have also passed, viz., the Board of Health, Metropolitan Sewers, and Metropolitan Burial Acts.

X. The only Act relating to the Law of Parliament is that for consolidating and amending the Laws relating to Bribery, Treating, and undue influence at Elections of Members of Parliament.

In this brief summary of the general scope of the several Statutes of the Session, we have necessarily omitted many details, and perhaps have not sufficiently explained all the prominent points, but some of the Acts, so far as they are important to the practitioner, have already been fully set forth—the rest will speedily follow; and during the vacation such notes and annotations will be supplied as may be deemed useful.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts of the present Session printed in the present Volume, with an Analysis to each, will be found at the following pages:—

- Income Tax, cc. 17, 24, pp. 46, 134, *ante*.
- Commons' Inclosure, c. 9, p. 64.
- County Court Extension, c. 16, 121.
- Registration of Bills of Sale, c. 36, p. 216.
- Warwick Assizes, c. 35, p. 218.
- Attendance of Witnesses, c. 34, p. 235.
- Evidence in Ecclesiastical Courts, c. 47, p. 254.
- Commons' Inclosure (No. 2), c. 48, p. 254.
- Cruelty to Animals, c. 60, p. 275.
- Ecclesiastical Jurisdiction, c. 65, p. 276.
- Highway Rates, c. 52, p. 276.
- Turnpike Trusts' Arrangements, c. 51, p. 276.

### ADMIRALTY COURT.

17 & 18 VICT. c. 78.

Commencement of Act, 1st August, 1854; s. 2.

Judge of Admiralty may appoint solicitors and notaries to administer oaths, &c.; s. 3.

Commissioner's appointment to bear a stamp of 1*l*.; s. 4.

Personal answers may be taken without a commission; s. 5.

Commission for examination of witnesses dispensed with, and examiners empowered to administer oaths; s. 6.

Answers, affidavits, &c., how to be sworn and taken in England and Wales; s. 7.

Answers, affidavits, &c., how to be sworn and taken out of England and Wales; s. 8.

Penalty for false swearing, &c.; s. 9.

Penalty for forging signature or seal of Judge, &c., empowered to administer oaths under this Act; s. 10.

Power to appoint persons under special circumstances to administer oaths, &c.; s. 11.

Power of Judge to issue commissions as heretofore, to administer oaths, &c.; s. 12.

Power to Court to proceed by way of monition; s. 13.

Her Majesty may by order in Council vary, alter, or abolish fees, and provide for their collection by stamps; s. 14.

After such order fees not to be received in money, but by means of stamps; s. 15.

Commissioners of Inland Revenue to give the necessary directions as to the stamps, and to keep separate accounts; s. 16.

**Provision for sale of stamps ; s. 17.**

Commissioners of Inland Revenue may make regulations as to allowance for spoiled stamps ; s. 18.

Provisions of former Acts relating to stamps to be applicable to stamps under this Act ; s. 19

No document to be received or used unless stamped ; s. 20.

Officers guilty of fraud or wilful neglect in relation to stamps liable to be dismissed ; s. 21.

Power to Treasury to order pensions for retiring officers ; s. 22.

Provisions to extend to instance, prize, and other matters ; s. 23.

The following are the Title and Sections of the Act :—

An Act to appoint Persons to administer Oaths, and to substitute Stamps in lieu of Fees, and for other purposes, in the High Court of Admiralty of England.

[7th August, 1854.]

Whereas doubts have arisen whether the "Commissioners to administer Oaths in Chancery" may lawfully administer oaths, or take declarations, affirmations, or attestations, in the High Court of Admiralty of England : and whereas it is expedient that fit and proper persons should be forthwith appointed for such purposes ; and it is also expedient to provide for the collection of the fees payable in relation to proceedings in the said Court by means of stamps to be provided and used for the purpose : be it enacted as follows :

1. This Act may for all purposes be cited as the "Admiralty Court Act, 1854."

2. This Act shall come into operation on the 1st day of August, 1854.

3. It shall be lawful for the Judge of the High Court of Admiralty of England, and he is hereby empowered, from time to time and as and when he may think fit, to appoint any person practising as a proctor, solicitor, or notary public in any part of England and Wales to administer oaths and take declarations, affirmations, and attestations in or relating to any matter, suit, or proceeding in the High Court of Admiralty of England ; and such persons shall be styled "Commissioners to administer Oaths in Admiralty," and shall be entitled to charge and take a fee of 1s. 6d. for every oath administered by them, and for every declaration, affirmation, and attestation, taken by them, subject to any order of the Judge of the said Court varying or annulling the same.

4. The fiat or document by which any such Commissioner shall be appointed shall bear a stamp of 1*l.*, and it shall not be necessary that any such appointment should be published in the *London Gazette*.

5. It shall not be necessary to sue out any commission to take the personal answers of any party in any matter, suit, or proceeding in the

said Court ; and any such answers may be filed without any further or other formality than is required in the swearing and filing of an affidavit.

6. It shall not be necessary to sue out any commission for the examination of any witnesses in any matter, suit, or proceeding in the said Court ; and any examiner appointed by any order of the said Court shall have the like power of administering oaths as Commissioners now have under commissions issued by the Court for the examination of witnesses.

7. All answers, examinations, affidavits, depositions on oath, declarations, affirmations, and attestations in or relating to any matter, suit, or proceeding in the said High Court of Admiralty shall and may be sworn and taken in England and Wales before any such Commissioner appointed as aforesaid, or before any magistrate or justice of the peace, or before any Commissioner to administer Oaths in Chancery.

8. All answers, examinations, affidavits, depositions on oath, declarations, affirmations, and attestations in or relating to any matter, suit, or proceeding in the High Court of Admiralty of England shall and may be sworn and taken in Scotland or Ireland, or the Isle of Man, or the Channel Islands, or any of them, or in any colony, island, plantation, or place under the dominion of her Majesty in foreign parts, before any Judge, Court, magistrate, notary public, or person lawfully authorised to administer oaths in such country, island, or plantation, or place respectively, or before any of her Majesty's consuls or vice-consuls in any foreign parts out of her Majesty's dominions ; and the Judge and other officers of the said High Court of Admiralty shall take judicial notice of the seal or signature, as the case may be, of any such Judge, Court, magistrate, notary public, person, consul, or vice-consul attached, appended, or subscribed to any such answers, examinations, affidavits, depositions on oath, declarations, affirmations, and attestations, or the documents to be used in the said Court.

9. All persons swearing, declaring, affirming, or attesting before any person authorised by this Act to administer oaths and take declarations, affirmations, and attestations, shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing, declaring, affirming, or attesting contained therein, as if the matter sworn, declared, affirmed, or attested had been sworn, declared, affirmed, or attested before any Court or person now by law authorised to administer oaths and take declarations, affirmations, and attestations.

10. If any person shall forge the signature or the official seal of any Commissioner, Judge, Court, magistrate, notary public, or other person lawfully authorised to administer oaths and take declarations, affirmations, or attestations under this Act, or shall tender in evidence any answers, examination, deposition on oath, declaration, affirmation, attestation, or other ju-

dicial or official document, with a false or counterfeit signature or seal of any such Commissioner, Judge, Court, magistrate, notary public, or other person authorised as aforesaid, attached or appended thereto, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall be liable to the same punishment as any offender under an Act passed in the 8 & 9 Vict., intitled "An Act to facilitate the Admission in Evidence of certain official and other Documents."

11. The Judge of the High Court of Admiralty of England may, whenever it shall appear to him necessary so to do, authorise any person to administer oaths and to take affidavits, depositions on oath, declarations, affirmations, and attestations during the time such person shall be on the high seas, or in any place not within her Majesty's dominions, in or relating to prize proceedings in the said Court, and it shall not be necessary to affix any stamp to the fiat or document by which any such person shall be appointed.

12. Nothing herein contained shall abridge or lessen the power of the Judge of the said High Court of Admiralty of England as it now exists to issue commissions as heretofore, and to appoint fit persons to administer oaths, declarations, affirmations, and attestations, and generally to execute any commissions, nor shall affect in any manner the power of the Judge or surrogates of the said Court to administer oaths and take affidavits, depositions on oath, declarations, affirmations, and attestations as heretofore, in or relating to any matter, suit, or proceeding in the said Court.

13. In all cases in which a party has a cause or right of action in the High Court of Admiralty of England against any ship, or freight, goods or other effects whatever, it shall not be necessary to the institution of the suit for such person to sue out a warrant for the arrest thereof, but it shall be competent to him to proceed by way of monition, citing the owner or owners of such ship, freight, goods or other effects to appear and defend the suit, and upon satisfactory proof being given that the said monition has been personally served upon such owner or owners, the said Court may proceed to hear and determine the suit, and may make such order in the premises as to it shall seem right.

14. Her Majesty may by order in Council from time to time vary, alter, or abolish all or any of the fees payable in relation to proceedings in the High Court of Admiralty of England, and may substitute one or more fee or fees in lieu thereof, and may direct that all or any of such fees shall, from a day to be named in such order and thenceforth, be collected by means of stamps, to be provided and used in manner hereinafter-mentioned.

15. From and after the day named in such order the fees directed by such order to be received by stamps shall not be received in money, but by a stamp denoting the amount of the fee which otherwise would be payable; and

where any fee shall be payable in respect of any document, such stamp shall, at the expense of the party liable to pay, and in such manner and under such regulations as shall by any order of the Judge of the said Court be directed, be stamped or affixed on the vellum, parchment, or paper on which the proceeding in respect whereof such fee is payable is written, printed, or engrossed, or which may be otherwise used in reference to such proceeding.

16. The Commissioners of Inland Revenue shall from time to time and as occasion shall require give the necessary directions for carrying the same into effect, and shall provide everything that is requisite for that purpose, and shall do or cause to be done everything that is necessary for the receipt and collection of the money to be paid for such stamps, and the said Commissioners shall cause separate and distinct accounts to be kept of all sums of money received or collected by them in respect of the sale of such stamps, and of all costs, charges, and expenses incurred by them, or by their direction, in carrying the same into effect.

17. The Commissioners of Inland Revenue may, if they think it necessary to do so, authorise proper persons for the sale and distribution of all or any of the stamps to be used under this Act, and may allow to such persons the usual or customary discount or poundage thereon.

18. The Commissioners of Inland Revenue shall from time to time make such regulations as they shall think fit for the allowance of such stamps issued under the provisions of this Act as may have been spoiled or rendered useless or unfit for the purpose intended, or for which the owner may have no immediate use, or which through mistake or inadvertence may have been improperly or unnecessarily used, and such allowance shall be made either by giving other stamps in lieu of the stamps so allowed, or by repaying the amount or value to the owner or holder thereof, after deducting the discount or poundage (if any) allowed on stamps of the like kind.

19. The provisions contained in the several acts for the time being in force relating to stamps under the care or management of the Commissioners of Inland Revenue shall (so far as the same are applicable and consistent with the provisions of this Act), in all cases not hereby expressly provided for, be of full force and effect with respect to the stamps to be provided under or by virtue of this Act, and to the vellum, parchment, or paper on or to which the same stamps shall be impressed or affixed, and be applied and put in execution for collecting and securing the sums of money denoted thereby, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes, as if such provisions had been herein repeated and specially enacted with reference to the said last-mentioned stamps and sums of money respectively.

20. No document which by any order as aforesaid ought to have had a stamp impressed

thereon or affixed thereto shall be received or filed or be used in relation to any proceeding in the High Court of Admiralty, or be of any validity for any purpose whatsoever, unless or until the same shall have a stamp impressed thereon or affixed thereto in the manner directed by such order: provided always, that if at any time it shall appear that any such document which ought to have had a stamp impressed thereon or affixed thereto has, through mistake or inadvertence, been received or filed or used without having such stamp impressed thereon or affixed thereto, the Judge of the said Court may, if he shall think fit, order that a stamp, not exceeding in value four times the amount of such original stamp, shall be impressed thereon or affixed thereto; and thereupon, when the proper stamp shall, in compliance with such order, have been impressed on such document or affixed thereto, such document, and every proceeding in reference thereto, shall be as valid and effectual as if such stamp had been impressed thereon or affixed thereto in the first instance.

21. If any officer of the High Court of Admiralty, or other person, shall do or commit or connive at any fraudulent act or practice in relation to any stamp to be used under the provisions of this act, or to any fee or sum of money to be collected or which ought to be collected by means of any such stamp, or if any such officer or person shall be guilty of any wilful act, neglect, or omission in relation to any such stamp or fee as aforesaid, whereby any fee or sum of money which ought to be collected shall be lost, or the payment thereof evaded, every such officer or person so offending may be dismissed from his office of employment by the Judge of the said Court.

22. It shall be lawful for the Commissioners of her Majesty's Treasury, on the recommendation of the Judge of the High Court of Admiralty, to order to be paid to any person now or hereafter holding any office or employment in the said Court, who shall be afflicted with some permanent infirmity disabling him from the due execution of his office, or shall be desirous of resigning the same, a superannuation or allowance; and in ascertaining and awarding the amount of such superannuation or allowance the same Commissioners shall proceed according to the principles laid down in the Act of the 4 & 5 Wm. 4, c. 24.

23. Except where it shall be otherwise expressed, the provisions of this Act shall apply to all instance, prize, and other matters, suits, and proceedings of which the High Court of Admiralty may legally take cognizance.

#### BOROUGH RATES.

17 & 18 VICT. c. 71.

An Act to amend the Law concerning the making of Borough Rates in Boroughs not within the Municipal Corporation Acts.

[31st July, 1854.]

Whereas by an Act of the 15 & 16 Vict. c. 81, intituled "An Act to consolidate and

amend the Statutes relating to the Assessment and Collection of County Rates in England and Wales," it was, among other things, provided, that from and after the passing of the said Act it should be lawful for the justices of the peace, in any county in England and Wales, in General or Quarter Sessions assembled, to appoint any number of justices, not exceeding 11 in number nor less than five, to be a Committee for the purpose of preparing a basis or standard for the assessing of county rates, and that it should be lawful for the justices of the peace assembled at their General or Quarter Sessions to order and direct a fair and equal county rate to be made according to the basis or standard for the time being in force: and whereas there are divers boroughs not being within the provisions of the Municipal Corporation Acts in which borough rates in the nature of county rates have heretofore been made under the various Acts repealed by the said Act of the 15 & 16 Vict. c. 81, and which boroughs have not as many as five justices of the peace: and whereas doubts have arisen whether since the passing of the said Act of the 15 & 16 Vict. c. 81, a rate in the nature of a county rate can be made in such boroughs by reason of the want of a sufficient number of justices: and whereas it is expedient to remove such doubts, as also to amend the law in respect to the making of such rates in the said boroughs: be it therefore enacted as follows:

1. From and after the passing of this Act it shall and may be lawful for the justices of the peace in any borough not being within the provisions of the Municipal Corporation Act, and not being liable to contribute to any county rate, from time to time to make and levy within their borough a borough rate in the nature of a county rate for defraying any expenses incurred before the passing of this Act, and which may hereafter be incurred for all or any of the purposes defined in the Municipal Corporations Act, 1835, as purposes for which a borough rate may be levied; and for that purpose the justices of such borough and all persons acting under their authority shall, within their borough, have all the powers and protection which were given to justices of the peace by virtue of the Act made in the 55 Geo. 3, in the said Municipal Corporations' Act mentioned, and all powers given to town councils by any Acts since passed concerning the making and levying of borough rates in boroughs being within the Municipal Corporations' Act, 1835, or as near thereto as the nature of the case will admit: provided always, that such borough justices shall not be empowered to hear or determine any appeal against any such rate; and if any person shall think himself aggrieved by any such rate, it shall be lawful for him to appeal to the recorder of the borough in which such rate has been made, or in case there shall be no recorder within such borough, then to the justices at the next Court of Quarter Sessions for the county within which such borough is situate, or whereunto it is adjacent, and such recorder or justices respectively shall have

power to hear and determine such appeal, and to award relief in the premises as in the case of an appeal against any county rate: and all sums of money levied in pursuance of such borough rate shall be paid over to the treasurer of the borough for the time being, and be applied by him for the purposes for which the same are applicable as hereinbefore-mentioned.

**ACKNOWLEDGMENT OF DEEDS BY MARRIED WOMEN.**

17 & 18 VICT. c. 75.

THE preamble recites 3 & 4 Wm. 4, c. 74.

Acknowledgment of deeds not impeachable by reason only of party before whom same was taken being interested; s. 1.

Staying proceedings for quashing certificate of acknowledgment; s. 2.

Court of Common Pleas may make rules for preventing Commissioners who are interested from taking acknowledgments; s. 3.

The following are the Title and Sections of the Act:—

An Act to remove Doubts concerning the due Acknowledgment of Deeds by Married Women in certain Cases. [7th August, 1854.]

Whereas by the Act passed in the Session of Parliament holden in the 3 & 4 Wm. 4, c. 74, "for the Abolition of Fines and Recoveries, and for the Substitution of more simple Modes of Assurance," it is provided that every deed to be executed by a married woman for any of the purposes thereof, except such as may be executed by her in the character of protector for the sole purpose of giving her consent to the disposition of a tenant in tail, shall, upon her executing the same or afterwards, be produced and acknowledged by her as her act and deed before a Judge of one of the Superior Courts at Westminster, or a Master in Chancery, or before two of the Perpetual Commissioners or two Special Commissioners to be respectively appointed as therein provided, and a certificate of the taking of such acknowledgment in thereby directed to be lodged with some officer of the Court of Common Pleas at Westminster, who is directed, after satisfying himself that the requisitions of the said Act have been complied with in manner therein mentioned, to cause the said certificate to be filed of record in the said Court of Common Pleas: and whereas it is apprehended that deeds executed by married women under the provisions of the said Act may be liable to be invalidated by the circumstance that the Judge, or Master in Chancery, or one or both of the Commissioners, taking the acknowledgment, may be or may have been interested or concerned, either as a party or otherwise, in the transaction giving occasion for such acknowledgment, and it is not expedient that deeds executed in

good faith under such circumstances should be invalidated: Be it therefore enacted, as follows:—

1. No deed which has been acknowledged or which shall hereafter be acknowledged by a married woman before a Judge of one of the Superior Courts of Westminster, or a Master in Chancery, or before two of the Perpetual Commissioners or two Special Commissioners appointed as by the said Act is required, shall be impeached or impeachable at any time after the certificate of such acknowledgment has been filed of record in the Court of Common Pleas at Westminster, by reason only that such Judge or Master in Chancery, or such Commissioners, or either of them, was or were interested or concerned, either as a party or parties, or as attorney or solicitor, or clerk to the attorney or solicitor of one of the parties, or otherwise, in the transaction giving occasion for such acknowledgment.

2. Provided, that if any proceeding instituted before the 13th day of July, 1854, in the said Court of Common Pleas, for the purpose of quashing or taking off the file of records of the said Court any certificate of an acknowledgment of a deed by a married woman, on the ground that such Judge or Master in Chancery, or either of such Commissioners, was interested or concerned as aforesaid, shall be pending at the passing of this Act, it shall be lawful for the said Court to proceed with and dispose of the same as if this Act had not passed, except that if the said Court shall be satisfied that any person or persons acting *bona fide* has or have been induced by the terms of the order made by the said Court in Hilary Term, 1834, to acknowledge, or to accept a title depending on the acknowledgment of, any deed or deeds before Commissioners, one of whom may have been interested or concerned as aforesaid, the said Court may refuse to permit the certificate to be quashed or taken off the file on such terms as to the payment of costs and expenses as the said Court shall think fit to make.

3. The Court of Common Pleas may from time to time make any rules which to them may seem fit for preventing any Commissioners interested or concerned as aforesaid from taking any acknowledgment under the said recited Act, anything herein contained to the contrary notwithstanding, so nevertheless that no such rule shall make invalid any acknowledgment after the certificate shall have been filed of record as aforesaid.

**NEW ORDER IN LUNACY.**

CHANCERY FOLIOS.

July 3rd, 1854.

I, ROBERT MONSEY, Baron Cranworth, Lord High Chancellor of Great Britain, intrusted, by virtue of her Majesty the Queen's Sign Manual, with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound



mind, do with the advice and assistance of the Right Hon. Sir James Lewis Knight Bruce, and the Right Hon. Sir George James Turner, the Lords Justices of the Court of Appeal in Chancery; also being intrusted as aforesaid, and by virtue and in exercise of the powers or authorities in this behalf vested in me by the Lunacy Regulation Act, 1853, and of every other power or authority, in anywise enabling me in this behalf, order and direct as follows, that is to say—

From and after the 5th of July, 1854, all office copies and other copies of proceedings, and documents in matters in lunacy, shall be counted and charged for after the rate of 72 words per folio, and where such copies or any portion thereof shall comprise columns containing figures, each figure shall be counted and charged for as one word.

(Signed) CRANWORTH, C.  
J. L. KNIGHT BRUCE, L. J.  
J. G. TURNER, L. J.

### NOTICES OF NEW BOOKS.

*An Exposition of the Land Tax, its Assessment and Collection; and the Rights and Advantages conferred by the Redemption Acts.* By MARK B. BOURDIN, of the Inland Revenue Office, Somerset House. London: T. F. A. Day. 1854.

THE unequal pressure of the land tax on different localities has lately been the subject of loud and just complaint; but it appears that the enactments bearing upon it, were not sufficiently considered when the applications were made to the Court of Queen's Bench, to compel the Commissioners of certain districts to make new assessments. The present concise work by Mr. Bourdin has been very opportunely published, and furnishes very valuable information on the subject. If the Superior Courts can afford no redress, an appeal must be made to Parliament, and the Author's labours will usefully aid in the amendment of the law.

It seems to have been overlooked that the Land Tax Redemption Act of 1798 rendered the quota payable by the several towns and places in Great Britain a *fixed* and *perpetual* charge; and Mr. Bourdin justly observes—

"That many towns and parishes which in that year might have been paying a quota of tax proportionate to the then annual value of the land, &c., within their limits, would at the present day, by reason of their increased wealth and extent, be contributing a sum far inadequate to the ratio of their modern value. On the other hand, parishes which, half a century ago, were populous and flourishing, and, by their accidents of situation or other-

wise, are unable to present similar increase in value, maintain nearly the original rate of repartition of their quota. It is thus that such places as Liverpool, Manchester, Preston, Bath, Brighton, &c., now contribute a rate from one farthing to one penny in the pound only, when others pay a shilling pound rate; and that in the metropolitan districts of St. Paul's, Covent Garden, St. Mary-le-Strand, and St. Ann's, and others, the assessment varies from one to two shillings in the pound, and upwards; whilst the quotas of St. Pancras, Marylebone, and Paddington, may be levied at a less rate than one penny. The quotas of land tax being no longer subject to revision, as when the tax was voted annually, the revenue is excluded from deriving any benefit from the improving condition of the property liable to the duty in question."

And he subsequently adds that—

"Although the quotas upon parishes cannot be varied, they are to be yearly raised in such parishes by an equal pound rate upon all the lands, &c., therein; and, were this statutory provision duly carried out, the rate now paid by many parishes would be materially lessened. It should be remembered, however, that the superintendence of the Government in raising the land tax is restricted to the obtaining of the full amount of the sum in charge upon the parishes, &c., the assessment of the tax upon individuals, being intrusted to the district Commissioners, and the officers they may appoint; as the law assumes, that from their local knowledge, they possess the readiest means both of fairly portioning the rate, and of equitably adjusting any dispute between the contributors. At the time when the land tax was voted yearly, this duty was rendered sufficiently easy, by the full and explicit directions contained in the annual Acts; but, since the passing of the Land Tax Redemption Act, and the several Statutes which followed, for altering and facilitating the operation of that measure, and for amending the mode of levying the tax: the due execution of the provisions now in force, imposes considerable trouble and research on all upon whom it devolves."

From the passing of the first Land Tax Acts till the year 1798, the tax was voted annually, and the amount to be raised and the rate was fixed for the year. The Author observes that—

"In the year 1798, the usual Act was passed for granting the Land Tax for the service of that year. This Act, the 58 Geo. 3, c. 5, directed the sum of 1,989,673*l.* to be raised in England and Wales, and fixed the contingent for Scotland at 47,954*l.* which sum was the amount paid by that country since the Union. In accordance with the established practice, the Act mentioned the quotas to be set upon counties and certain divisions, towards raising the amount to be paid in England and Wales, and required that such quotas should be still

levied within the several divisions and subdivisions, in proportion to the sums respectively assessed thereon by the Act 4th William and Mary. The quota for Scotland was also to be raised according to the proportions specially named in the Act.

"Before this time, however, the principle of assessment observed under the first Land Tax Acts had been widely departed from. Personal estate, which it was evidently intended should contribute the larger share of the annual quota granted,<sup>1</sup> had been gradually relieved from assessment and to such an extent, that in 1798, the proportion of the quota borne by pensions, officers, and personal estate together, amounted only to 150,000*l.*, whilst lands, tenements, and other property contributed the remainder.

"In the month of June of this year, Mr. Pitt produced his scheme for the redemption of the Land Tax, which was brought into operation by the Act 38 Geo. 3, c. 60. The object of this measure was to diminish the pressure of the public debt in the market by causing the absorption of a large amount of stock. In order to carry out the plan, the Land Tax, which by the assessment of the current year was charged upon the several counties, ridings, stewartries, cities, boroughs, cinque ports, towns, and places in Great Britain, in respect of lands, tenements, and hereditaments, was made perpetual upon such counties, ridings, &c., subject to redemption; and the quotas thus rendered a fixed charge have been therein levied (minus the redeemed portion thereof), from the passing of such Act to the present time."

Mr. Bourdin explains in one of his notes that—

"The consideration to be given for the redemption of any Land Tax was so much Stock in either of the Three per cent. Consolidated or Reduced Bank Annuities as would yield a dividend exceeding the amount of such Land Tax by one-tenth part thereof. Supposing the amount of the Land Tax sought to be redeemed was 10*l.*; stock sufficient to produce 11*l.* per annum was required—viz., 336*l.* 13*s.* 4*d.*, and such stock was to be transferred to the account of the Commissioners for the Reduction of the National Debt. As the Land Tax, when levied and paid into the Exchequer, was applied in part liquidation of the interest of the debt, the annual amount lost to the revenue

by redemption was thus balanced by a proportionate cancellation of capital stock. The small excess of one-tenth was imposed for the purpose of defraying the expense of conducting the measure, but since 1798 this extra tenth has far exceeded, in the aggregate, the total amount of expense incurred. As the above mode of providing the consideration for the redemption of the Land Tax was found inconvenient in cases where the tax redeemed was of small amount, a provision was inserted in an Act passed a few months later, empowering persons whose Land Tax did not exceed 25*l.* per annum, to redeem the same by payment of so much money as would purchase the like amount of Stock they must have transferred, had they elected to effect their redemption by such transfer of Stock.

"The option to redeem by a money payment, which was restricted by this Act to persons who did not redeem a higher amount of Land Tax than 25*l.*, was finally extended by the 53 Geo. 3, c. 123, to redemptioners of any sum of Land Tax, however large in amount. By the 16 & 17 Vict. c. 74, the above mentioned terms were reduced by 17*l.* 10*s.* per cent. in the amount of the Stock or money consideration."

The Author's publication may assist in obviating some of the irregularities of local assessment; but we apprehend any general relief against this great grievance must be sought for at the hands of the Legislature. Our present ingenious and expert Finance Minister might, if he were so minded, remodel the tax, and whilst he did justice to all parties, in no small degree benefit the public revenue. We are aware that the task is not free from serious difficulties, and that various classes of interests will have to be considered; but ultimately we doubt not that what is substantially right may be accomplished, if not immediately, within a reasonable period. It cannot be for ever endured that one part of the Metropolitan District should be compelled to pay 2*s.* or more in the pound, and other parts in the same county less than a penny!

## DEPOSITS ON SALES OF ESTATES BY AUCTION.

### SUGGESTION OF THE INCORPORATED LAW SOCIETY.

THE attention of the Council of the Society has been directed to the present practice in London, of making deposits on the sale of property by auction payable into the hands of the auctioneer, to be held by him until the sale be completed or abandoned.

The Council having considered this important matter, have arrived at the conviction

<sup>1</sup> "Lord Loughborough in delivering judgment in the case of *Astle v. Grant* (2 Dougl. 722), remarked of the Land Tax, 'this tax, although commonly called a Land Tax, is not in its nature a charge upon the land. It is a charge upon the faculties of men estimated first according to their personal estate, secondly by the offices they hold, and lastly by the land in their occupation. The land is but the measure by which the faculties of the persons taxed are estimated.'"

tion that a change is necessary; that the present custom of requiring the deposit to be retained by the auctioneer should no longer be followed; and that it would be advisable, on the sale of property by auction, that a condition to the following effect be adopted, namely:—

“That all deposits on account of purchase money on sales of estates by auction in London, be paid to the auctioneer, who shall immediately after the sale pay the same into a bank, to be named by the vendor in the conditions of sale, in the joint names and subject to the joint order of the vendor and purchaser, or their nominees, and at the vendor's risk.”

The adoption of this course will enable the parties to place the money in a bank where interest is allowed, or to invest it in Exchequer bills or stock, or to effect any other arrangement respecting it, that may be mutually desired for making the deposit safe and productive. In such cases the interest would belong to the party ultimately entitled to the deposit.

Extracted from the Minutes of Proceedings.

By order of the Council.

R. MAUGHAM, *Secretary*.

*Law Society's Hall, Chancery Lane,  
3rd August, 1854.*

[We are informed that the practice of leaving the deposits on sales in the hands of auctioneers does not exist in the country. The deposits are either paid to the vendor's solicitor or a banker, or invested in the joint names of the vendor and purchaser. Ed.]

## ENFRANCHISEMENT OF COPYHOLDS.

### MANOR OF KENNINGTON.

To the Editor of the *Legal Observer*.

SIR,—I confess I am not one of those who have arrived at the hasty conclusion of “Fair Play,” that the petition of the copyholders (*Legal Observer*, June 17), manifests either “passion, prejudice, unfairness, or injustice.” “R. L.’s” reply in your Number of 29th July, most conclusively disproves the gratuitous and unfair assertion. A professional gentleman writes on its perusal, “I unhesitatingly say that the writer is ‘out of Court.’” Neither can I discover anything approaching ill humour. That he has justice and equity on his side cannot be gainsaid.

To allege, as “Fair Play” reiterates in your Number of 5th August, that the lord is entitled to fines on the *improved value* of land, let on building leases, is begging the whole question. Is, or is not, the lord at least a consenting

party to granting the leases under the licences to demise?

I will put a case, which recently occurred, in actual practice, in this manor. In 1823, Mr. W. Bradshaw purchased of Mr. Tyers several plots of land for 2,268*l.*, which were then let at 2*l.* a year. In December he was admitted, and on the 25th of March, 1824, a general licence to demise was granted to lease to any person for any term not exceeding 80 years from thence, and it was then arranged that the fines should during the term be assessed at 80*l.* rent, and a fine of 4*l.* was paid to the duchy for such license. That property has since been covered with buildings, and leases have been granted on the faith of the license; the aggregate rents being no less than 1,266*l.* a year; the annual rent exceeding 3,300*l.* Will it be avowed by “Fair Play” that a fine of 6,600*l.* would, against all conscience, be demanded on a change of tenancy, being two years rack-rent?

It is by no means foreign to the present subject to state that in the adjacent manor of Lambeth, belonging to the Archbishop of Canterbury, in right of his see, his Grace, or rather the Ecclesiastical Commissioners take, with the entire sanction of the Copyhold Commissioners three and a half year's annual ground rent for *enfranchisement*, and never give a refusal; and in order that his Grace might be enabled to bind his successor in the see, to the validity of building leases for long terms of years, under licences to demise granted by the steward, an Act of the Legislature was passed (6 Geo. 4, c. 47), binding the see to accept fines on future admissions, according to the rents reserved on such building leases, an affidavit being previously made by his Grace's surveyor (the bailiff of the manor), that such rents were fair and reasonable. Whether it might not be decorous for the council of the duchy, as representing the heir to the throne, to follow an example so excellent, and to act upon it, I shall not discuss. I may, however, observe, that by the 7 & 8 Vict. c. 65, s. 25, full power is given to his royal highness to grant licences to demise for *ninety-nine years*, in which was to be expressed the sum which during the term, might be considered as the annual value, for assessing the fines during the term, upon the admission of any new tenant to the property improved or built upon. Surely after such a legislative enactment, and such a licence to demise, it is difficult to see how the lord would be deprived of a *material portion of his rights*, as alleged. It is very well to say, Let the tenant refuse to pay the fines, but it is well known that the steward, contrary to every principle of law, *peremptorily and illegally refuses* to admit until such fines are paid, and for payment of which it is incumbent, on the steward to name a *distant day*. And even assuming such admittance took place on payment of fees and stamp duty, which are *all that can be demanded previously* thereto, what loyal subject would venture to go to law with

the Duchy of Cornwall, much less to move the Court of Queen's Bench for a mandamus (it may be against his Royal Highness the Prince of Wales), and his steward to compel admittance. The ruinous costs, and the obloquy would be intolerable. Possibly the council may be ignorant that in 1836 a memorial was presented by the copyholders of Kennington Manor, to his Majesty William IV., praying for enfranchisement, and thereby stating that "They were willing and desirous, and as a consideration for such enfranchisement of their several copyholds, to relinquish and give up to your Majesty, as lord of the said manor, *all their common rights and other interest whatever*, in and upon the *said common and waste lands*." However gracious the intentions of his Majesty were at the time, nothing was ultimately effected (legal difficulties existing), although the relinquishment of the entire common would have been of immense advantage to the duchy. (It is believed little short, if not exceeding 20,000*l.* to 30,000*l.*) In 1852 an Act was passed to empower the Commissioners of her Majesty's Works and Public Buildings to enclose and lay out Kennington Common as pleasure grounds for the recreation of the public. By sect. 4, it is benevolently enacted that the common shall be vested in the Commissioners, "*freed and discharged*" FROM ALL RIGHTS OF COMMON, and all other rights whatsoever.

By the custumal of the manor, dated 28th Nov., 1728, under the signature of Matthew Lant, Esq., Lord Chief Baron of Scotland, the then steward, it appears, "That a copyholder may let and set his land from three years to three years, but no longer, without leave from the lord; which *licence* BEING DESIRED, the lord, upon a small fine arbitrable, MUST GRANT the same for 21 years, and no longer. N. B. There are licences granted by the present steward for 99 years." (There was one granted, in 1703, to R. Palmer, for 99 years).

If "Fair Play" imagines any builder would take a building lease subject to the payment of a portion of the fines from time to time payable by the copyholder, he is at liberty to try. Doubtless the editor of the "Builder" will aid him in his hopeless attempt.

Referring to the outrageous cases stated page 124 of your Number of June 17, I think the Courts would relieve against such injustice and oppression. In the case of Arden, he was charged a fine of 64*l.* on a ground-rent of 60*l.* a year, issuing out of premises let for 90 years from 1790, and actually paid 235*l.*, or nearly four years' ground-rent, to avoid litigation.

In Sawyer's case, he was charged 147*l.* on a ground-rent of 8*l.* 10*s.* on a lease granted pursuant to licence from June, 1796, and paid, to avoid litigation, 119*l.* 15*s.*,—a sum equal to 12 years' income; the steward (contrary to law) refusing to admit him until the fine was paid.

If "Fair Play" wishes an investigation into the *legality* and *justice* of such unprecedented

demands, let a Committee of the Commons be authorised to make due inquiry, and let that inquiry extend to the *fees received* and *their appropriation*, and let such Committee report on the legality and propriety of the instructions promulgated by the council in February, 1848, as regards the *fines on building leases*, ultra the ground-rent, according to the unexpired terms of those leases; and whether the solicitor of the Duchy and the steward have not, in reply to applications to them, insisted on fines according to the rack-rent, and not on the ground-rent.

I refer to the *Morning Chronicle* of the 27th March, 1852, on the discussion on the late Copyhold inefficient Enfranchisement Bill, to show the opinion of the *then Ministry* on a *general enfranchisement*. Mr. Walpole said, he believed the Bill, by the arrangement come to with the lamented Mr. Aglionby, would be rendered much better than it then stood. The compulsory clauses to which he objected, would, in his opinion, be oppressive and injurious to the copyholder, but the other clauses, with certain amendments, would **TEND VERY MUCH TO THE GENERAL ENFRANCHISEMENT OF COPYHOLDS.** See *Times*, 27th May, 1852.

I am pleased to hear that petitions have been presented to her Majesty as well as to Prince Albert (as Chief Steward of the Duchy), and to the Lords, as well as the Commons, and that favourable replies have been received from the Home Office and the Treasury, from which I venture to argue that the day is not far distant when the abominable feudal tenure will be utterly abolished on fair and equitable terms. I am informed, on authority on which I can rely, that two noble lords, members of the Council, at the close of the last Session (in consequence of a petition then presented by Mr. Aglionby from the copyholders of Kennington, praying for enfranchisement), were deputed to wait upon the Copyhold Commissioners for their advice as to placing the enfranchisement of the Kennington copyholds under their management, but of the result I am ignorant.

Whatever knowledge "R. L." may possess of mathematical calculations, it is clear that he has stated the facts as to the value of the copyholds too much in the lord's favour; and I may add, that according to the opinion of Mr. Morgan, the eminent Actuary of the Equitable Assurance Office, the interest of the lord, in respect of fines of one and a half years on alienation, and two years on descent (usually denominated *fines arbitrary*), is equal to about *one-eleventh of the rents*, or with an average life on the rolls, worth about two and a half years' purchase; and in books of acknowledged authority, particularly those of Mr. Rolla Rouse, Barrister-at-Law, who is lord as well as steward, three years' purchase is alleged to be the general price of enfranchisement, and it is stated that his Grace the Duke of Sutherland and Mr. Giffard, as lords of the extensive manor of Slowheath, have

offered enfranchisement to *all their tenants on corresponding terms.*

I cannot conclude without noticing how nearly "R. L.'s" opinion of the value and that of Mr. Morgan, the actuary, concur,—and that of "R. L.," in his letter, which however is no proof that he has with his legal practice paid little attention to mathematical questions in relation to the partial interests in property between lord and tenant.

*Lincoln's Inn, 8th August, 1854.*

A. M.

## LAW OF ATTORNEYS AND SOLICITORS.

### TAXATION OF BILL OF COSTS WHERE SPECIAL AGREEMENT.

A SOLICITOR entered into a special agreement with his client for interest on his bill of costs, with annual rests, and that he should have a lien on the estate recovered. On a motion to discharge an order obtained by the client as of course to tax the bill, the *Master of the Rolls* said,—“The Taxing Master, under this order, would be bound to tax in the ordinary way. I think there is a sufficient question to make an order of course, in such a case, improper. It must, therefore, be discharged.” *In re Moss*, 17 Beav. 59.

## LAW OF COSTS.

### OF CROWN ON QUESTION UNDER LEGACY DUTY ACT.

UPON the death of certain annuitants, a petition was presented for payment out of Court to the parties entitled of the fund set apart to answer the annuities, and upon a question being raised whether such fund was not liable to legacy duty under the 55 Geo. 3, c. 184, the Court directed the solicitor of the Commissioners of the Inland Revenue to be served with the petition, and also a case to be stated to the Court of Exchequer. The *Master of the Rolls* having held that no legacy was payable, counsel for the Attorney-General applied for costs, although the claim had failed. His Honour said—“The general practice does not appear to entitle the Crown to costs. I must follow the general rule, that the Crown neither receives nor pays costs, except where they are provided for by Statute.”

*Hobson v. Neale*, 17 Beav. 178.

### OF SUIT FOR SPECIFIC PERFORMANCE WHERE VENDOR SUCCEEDS.

Where the vendor of an estate succeeded in a suit for the specific performance of a contract,

the *Master of the Rolls* held, that as the circumstances showed the suit had been occasioned solely by the conduct of the defendant, he must pay the ordinary costs of it, notwithstanding the title was first shown in the Master's office.

*Pears v. Sneyd*, 17 Beav. 151.

## CONSTRUCTION OF STATUTES.

### EQUITY JURISDICTION IMPROVEMENT ACT.

#### CROSS-EXAMINATION ON MOTION FOR DECREE.

THE plaintiff upon giving notice of motion for a decree under the 15 & 16 Vict. c. 86, s. 15, filed affidavits in support, and also one in reply to those filed by the defendant in opposition. The defendant then obtained the appointment under s. 30 of a special examiner at Liverpool to take the plaintiff's cross-examination, whereupon this motion was made to stay the proceedings thereunder.

The *Master of the Rolls* said—“The 40th section of the Act provides, ‘That any party may require the attendance of any witness before an examiner of the Court, or an examiner specially appointed for the purpose, and examine such witness orally, for the purpose of using his evidence upon any claim, motion, petition, or other proceedings before the Court, and any party having made an affidavit to be used, or which shall be used on any claim, motion, petition, or other proceeding before the Court, shall be bound to attend before an examiner, for the purpose of being cross-examined,’ is very general in its terms, and applies to every possible case that can arise, and undoubtedly authorises the making of the order complained of. All that the Court by the general orders has done, is to prescribe the time within which an affidavit is to be made. Moreover, it is but reasonable, that the clause in the Act should comprehend motions for a decree, as well as all other motions; and such an interpretation does no violence to the words of the clause, which are of a very general character; for it is the obvious sense and meaning of them, that the parties should be at liberty to obtain such an order as that complained of. The other sections of the Act and general orders, which have been referred to, do not, in my opinion, in any way affect or limit the power given by the 40th section of the Act.” *Williams v. Williams*, 17 Beav. 156.

## PRACTICE ON CLAIMS.

## AMENDMENT AFTER SET DOWN FOR HEARING.

AN application had been made and refused to postpone the hearing of a claim, and the defendants prepared their affidavits in expectation it would come on. The plaintiff then obtained the common order to amend, and served it on the defendants, who thereupon moved to set it aside, on the ground that the fact of the claim having been set down for hearing ought to have been stated upon the application for the order.

The Master of the Rolls said, that he had inquired and found that the practice was settled, that a claim might be amended after it had been set down for hearing, and the motion was accordingly dismissed with costs. *Gwynne v. British Peat, Charcoal, and Manure Company*, 17 Bear. 7.

## VACATION BUSINESS.

## CHANCERY CHAMBERS.

DURING the vacation, until further notice, all applications which are necessary to be made at the Judges' Chambers are to be made at the Chambers of the Vice-Chancellor Stuart.

Persons desirous to make any urgent special application to the Court during the vacation are to apply at the said Chambers for an appointment.

The Chambers of the Vice-Chancellor Stuart will be open every day in the week except on Saturdays—on Mondays from 12 to 2, and on other days from 11 to 1.

## INCORPORATED LAW SOCIETY.

## ANNUAL REPORT OF THE COUNCIL.

[Continued from p. 287.]

June 27, 1854.

*The Stamp Act.*—In the Stamp Act of last Session, the Council succeeded in inducing the Chancellor of the Exchequer to make a beneficial alteration in the Stamp Duty on the Assignment of Irish Judgments, as charges upon land. The Council obtained from the Law Society of Ireland a copy of the judgment of Chief Justice Lefroy, delivered in the Irish Court of Queen's Bench last year, on the subject of those stamps, and they were informed by the Secretary of the Irish Law Society, that the Solicitor of Stamps in Ireland did not consider the decision conclusive until confirmed by the Courts of Common Pleas and Exchequer in full Court. It consequently ap-

peared, that when any difference of opinion occurred between the officer of stamps and the solicitor of the party interested, the latter was obliged to procure, at his own expense, the opinion of the Attorney-General. The Chancellor of the Exchequer concurred with the Council, in the justice of the principle contended for, namely, that on assignment of judgments, where the *ad valorem* duty had already been paid on the bond or warrant of attorney, the stamp should be only 35s., and the Stamp Act was accordingly amended in this particular.

The Council have also had under their consideration another Stamp Duties' Bill of the present Session, on which they have sent suggestions to the proper authorities.

3rd. *The Ecclesiastical Courts.*—Perhaps the most important of all the Bills under the consideration of the Legislature at the present time is that for the abolition of the Testamentary Jurisdiction of the Ecclesiastical Courts, and its transfer to the Court of Chancery.

The Bill in its amended form may be thus briefly described:—

1st. *As to the Court.*—The Testamentary Jurisdiction of the Ecclesiastical and other existing Courts, including their Jurisdiction with respect to the Recovery of Legacies, is proposed to be abolished, and vested in the Court of Chancery, and a Testamentary Office to be established in Chancery. The grants of Probates of Wills and Administrations are to take place according to the present practice, and a suit to establish a will may be instituted either by bill or claim. The Court may direct the validity of a will to be tried before a jury.

In the country, Probates or Administrations may be granted through a District Office, if the testator or intestate had a fixed place of abode within the district, and the estate does not amount to 1,500*l.* Wills are to be retained by the registrar in country districts for a limited time, and afterwards transmitted to the Court in London.

2nd. *As to the Practitioners.*—The present advocates of Doctors' Commons are to be admitted to practise in the Court of Chancery, and proctors may be admitted and practise as solicitors, not only in testamentary, but all business in the Court of Chancery. The proctors are to have the exclusive right of conducting common form business for 10 years, after which it is to be thrown open to all solicitors.

In the country districts solicitors are to be appointed to act in common form business exclusively of other solicitors for 10 years in the 27 towns specified in the Schedule to the Bill, where there were resident proctors on the 1st Jan. last.

In other cases the common form business is to be thrown open immediately in the country districts to all solicitors.

The Incorporated Law Society being composed of proctors as well as attorneys and solicitors, the Council have not felt it to be con-

sistent with the constitution of the Society to take any active part in promoting the contemplated change.

Several members of the Council attended the Commissioners at their request, and gave their evidence upon the working of the present system, and their opinions of the proposed alterations.<sup>1</sup>

**4th. Joint-Stock Trust Bills.**—The members are probably aware that two joint-stock companies have been projected for the administration of private trusts. The first by the South Sea Company, which, on winding up its own affairs, proposed to continue its corporate powers for the purpose of executing family and all other private trusts; and the second Bill proposed to incorporate a new company to be called "The Executor and Trustee Society." The Council have felt it to be their duty strenuously to oppose both these Bills.

It may be doubtful how the Bills, if passed, would have affected the interests of the Profession; but the question before the Legislature was, whether any serious evil or inconvenience existed to justify any alteration of the law, and whether these joint-stock companies were clearly adapted to remedy the alleged grievance. The Council were of opinion that no defect in the law existed which would be supplied by the proposed companies, and on the other hand, that the proposed Acts would have introduced a series of difficulties, in the course of managing the trusts, which would have led to perpetual delay, litigation, and expense.

The Council, therefore, prepared a petition on the part of the Society collectively, and another from individual attorneys and solicitors practising in the Superior Courts, and communicated their reasons against the several Bills to the Provincial Law Societies. The South Sea Company's Bill, and afterwards the other, having been referred to a Select Committee of the House of Lords, the promoters of both Bills signified their intention to appear by counsel. On the part of the Society, therefore, Mr. Selwyn was instructed to oppose the trust clauses of the South Sea Bill, and the whole of the Executor and Trustee Bill. The evidence on both sides has been printed, and copies have been placed in the Hall and Library for the perusal of the members. The several objections urged before the Committee were, that the Bills proposed, 1st, to establish the legality of trading in trusts, and making a profit out of that trade; 2ndly, to establish the principle of *limited liability* of trustees, and to absolve them from all *personal* responsibility; 3rdly, to sanction an *unlimited capacity* in a corporation to take land, and hold and manage land to any amount; 4thly, to contradict a principle deliberately decided by the Legislature, in the case of municipal corporations who were possessed of large charity estates in trust, that it was not advisable to allow them to con-

tinue in the hands of those corporations, but to appoint individual trustees; 5thly, to effect these objects by a body who have avowed the intention of superseding, as far as possible, the established tribunals of the country; 6thly, that if the evils which have been suggested do in fact exist, the measure is not calculated to remedy those evils; 7thly, even if the Bill could remedy all or any of these evils, still it would introduce new and additional evils of much greater magnitude. And finally, that at all events this is a measure involving such principles as ought not to be introduced by a private Bill; but if Parliament, in its wisdom, think fit to alter the established law of the country in a matter of such importance, it should be done after due deliberation, and as a public measure.

At the conclusion of the fourth day's sitting the Select Committee decided that the South Sea Bill should proceed for the sole purpose of winding up the affairs of the company, that the trust clauses should be struck out, and that the Executor and Trustee Bill should proceed no further.

In the opposition which the Council have thus felt themselves bound to make against these measures, they desire to acknowledge the constant attention, unwearied zeal, and great ability with which their views have been supported and carried into effect by Mr. Kinderley, the President of the Society, and Mr. Geo. Burrow Gregory, who were examined before the Committee, and gave important evidence in opposition to both the Bills, and whose exertions have largely contributed to their rejection.

**5th. Equity Courts.**—During the present Session no proposition has been made for the further alteration of the jurisdiction and procedure in Chancery. The important Acts passed in the Sessions of 1852 and 1853 have effected beneficial alterations; but some further amendment is under consideration with regard to the mode of taking evidence *visâ voce*.

One Bill, however, may be mentioned authorising the institution of suits for declaring the future rights of parties, and perpetuating the testimony of witnesses relating to anticipated claims or disputes; but it is not expected that this measure will pass in the present Session.<sup>2</sup>

**Audience of Solicitors in Bankruptcy Courts.**

—In the Bankruptcy Bill of last Session a clause was introduced, prohibiting solicitors from being employed by other solicitors before the Bankruptcy Courts. The Council prepared reasons against this proposed enactment, and, amongst other Peers, addressed Lord Truro on the subject, who kindly took the subject into consideration, and made an appointment to receive a deputation from the Council. Subsequently thereto the Lord Chancellor stated in the House that the whole

<sup>1</sup> The Testamentary Jurisdiction Bill has since been postponed.

<sup>2</sup> Several other Bills relating to the Court of Chancery have recently been introduced, which are receiving the attention of the Council.

subject of Bankruptcy and Insolvency Law was under the consideration of the Government, and that it was intended to institute a full inquiry; the further progress of the Bill was therefore postponed.

**6th. Local Courts.**—To the Bills already mentioned may be added some others for the extension or amendment of certain local Courts, such as the Stannaries Court in Cornwall, and the Manchester Borough Court. These larger local Courts are not limited, like the County Courts, to a small amount of exclusive jurisdiction, and are so far at variance with the principle of the County Courts, which were designed to establish a uniformity of jurisdiction and practice. It is manifest that these diversities of jurisdiction are objectionable, and that the proper systematic course should be to abolish all local Courts, except the County Courts, but to give a concurrent jurisdiction to the Superior Courts, down to 5*l*.

It is remarkable that in the present Session no further attempt has been made to extend the jurisdiction of the County Courts, except by a Bill, which has recently received the Royal Assent, authorising appeals to the Superior Courts in actions brought in the County Courts by the consent of the parties, and which were only brought within their jurisdiction by such consent.

If the County Court Commissioners should make their report in time, the Profession may expect next Session an important modification and improvement of these Small Debt Courts.

**7th. Criminal Law.**—The Bill for constituting public prosecutors, although postponed for the present session, should not be lost sight of, more especially in the country, where the proposed officer may exercise, if so disposed, an unequal and objectionable extent of patronage in the appointment of the counsel and attorneys who conduct the prosecution. The objects to be gained in behalf of the public are, that, on the one hand, the county shall not be put to the expense of improper and malicious prosecutions, and, on the other, that no corrupt practice shall prevail in suppressing evidence or compounding offences.

**8th. Miscellaneous.**—Alterations have been also proposed in our *mercantile laws*, by adapting them to the whole of the British empire, including particularly those of Scotland. In the present session an attempt has been made to remodel the law of bankruptcy in that part of the empire, but it has not made much progress, and cannot be expected to pass at present.

The Council have also given their attention to other measures for alterations of the law which affect rather the community at large than the Profession in particular. As an instance, they may mention the law of partnership, and particularly the proposed *limited liability of partners*. They do not now enter into the general question of the balance of advantages and disadvantages to the public of such limited partnerships; but they will be prepared, when any measure appears for carrying the

proposition into effect, to examine closely the provisions by which the plan may be proposed to be effected.

Some other legislative proposals have also been brought before Parliament, or subjected to investigation by Committees and Commissioners, and to which the attention of the Council has been directed. Amongst these may be mentioned the suggested alteration of the Law of *Divorce*, under which, instead of a few very expensive applications to Parliament, there may arise numerous suits at comparatively small expense. Into the policy of such an alteration of the law it is not the province of the Council to enter; but it is manifest that it may become the duty of the members of the Society, in behalf of their clients, to watch the legal machinery by which the new law would be carried into effect, whether in any of the present Courts or a new Court to be established for the purpose. The measure will probably be suspended until the change with regard to the Ecclesiastical Courts has been effected.

Many Bills have been introduced for the alteration of the *Law of Parliament*, which affect the members of the Profession in common only with the rest of the public, except in the project for the better representation of the people in Parliament, in which it was proposed that the Inns of Court should be specially represented; but these Bills have been postponed.

## II. ANNUAL CERTIFICATE DUTY.

Previously to the last annual meeting, the motion for the repeal of this tax was made on the introduction of the Bill by Lord Robert Grosvenor, and was carried by 52 in a House of 390 members. This took place on the 10th of March; and after that favourable division, Mr. Milner Gibson, on the 14th of April, succeeded in carrying a motion for the total repeal of the Advertisement Duty against the Government by a majority of 31 in a House of 208 members. Soon afterwards, namely, on the 18th of April, the Chancellor of the Exchequer, in making his financial statement, not venturing to pass over entirely the successful movement against the Certificate Tax, proposed that it should be reduced one-fourth; but accompanied this by adding his intention to reduce the stamp on the articles of clerkship one-third, as to which tax no complaint, it must be observed, had been made, and against which not even one petition had been presented.

The Council thereupon addressed all the Provincial Law Societies and their other correspondents throughout the kingdom, and ascertained their views of the Government proposal.

From time to time the question was postponed, and the Chancellor of the Exchequer succeeded by separating the reduction of the Certificate Tax and of the duties on advertisements from the other objects of the Stamp Bill, and placing them in juxtaposition, to gain an advantage in favour of the advertisements over the less popular claims of the Attorneys in regard to the Certificate Tax.



On the debate on the second reading of Lord R. Grosvenor's Bill for the Repeal of the Certificate Tax on the 20th of July, the Chancellor of the Exchequer very adroitly reminded the House that on the 18th of April he had stated that the changes in the fiscal regulations of the country then contemplated by him would leave a surplus for the year of 495,000*l.*; and that since that time it appeared by various means that he was left with a surplus only of from 150,000*l.* to 200,000*l.*, most of which would be required to meet certain charges to be presented to the House in a supplemental estimate. He stated he had been asked to repeal the Advertisement Duty 80,000*l.*, the Attorneys Certificate Duty 80,000*l.* more. If both these duties were repealed it was plain that the financial operations of the year would have to be carried on, not on a surplus but on a deficit.

On the question being put that the Bill should be read a second time, the majority against it was 83, but on examining the division list it appears that 61 members who had previously voted for the repeal of the Certificate Tax voted against it on this occasion. These 61 votes deducted from the majority and added to the minority would have given a clear majority of 39 in favour of the Bill.

On this adverse decision being known, the Council again communicated with the Provincial Law Societies, and Solicitors in the several towns where there are no Law Societies, with a view to the continuance of their efforts in the present session; but they met with very little encouragement to press the subject further, a comparatively small number only being in favour of immediately continuing the appeal to Parliament.

At the commencement of the session the Council took the whole subject into their consideration; and whilst they would have been willing to renew the application if any hope of success remained, they felt, in the then state of public affairs, and in the uncertainty of the continuance of peace, it was expedient to abstain from bringing the question before Parliament. They consulted Lord R. Grosvenor and other members who had supported the measure, on the course to be pursued, and were advised that it was not only hopeless to gain a rehearing of the case, but that the pressure of the question at that time would produce an injurious effect on a future occasion. The Society, therefore, did not present any petition on the subject; but Lord R. Grosvenor, whose strong sense of justice has constantly supported the claim of the Profession, announced in his place in Parliament that his clients did not admit that the relief afforded to them was satisfactory; but that, on the eve of a war, they felt constrained to defer their claim till the state of public affairs should permit it to be again brought forward. From the manner in which this intimation was received it was evident that the prudent course had been adopted. In closing their exertions with respect to this affair for the present, the Council may, how-

ever, observe, that, after a contest continued during four sessions of Parliament, the Profession has been relieved of part of the tax to the amount of nearly 80,000*l.* a year, and that the way is still open, upon a more favourable occasion, to press the rights of the Profession to a total repeal of the tax; and the Council hope that some future measure may be attended with that result.

### III. EQUITY AND OTHER COSTS.

The change which has taken place under the recent Statutes and Rules of Court in the pleadings in Chancery, nearly altering the whole practice, seems to render it absolutely necessary that the mode of remunerating solicitors should be placed upon a better and juster footing. Since the last annual report the Council have made several further communications to the Lord Chancellor, and he has also favoured them with interviews on this important subject.

In March last they submitted to his Lordship a summary of the suggested alterations which they had prepared in accordance with the desire which his Lordship was pleased to express to the deputation who had the honour of attending him. The reasons in support of the proposed alterations, with the explanatory details connected with them, were contained in the papers submitted to his Lordship last year. The main feature of these alterations, besides various changes in specific fees, consisted in giving a discretionary power to the taxing officer, in cases which could not be provided for by such fees, to regulate his allowance by the industry and skill displayed by the solicitor in his work, and by its importance;—thus encouraging the solicitor to expedition and brevity. The Lord Chancellor was informed that the Judges of the Courts of Common Law had recently revised their scale of charges in consequence of the extensive alterations made by recent statutes and orders in the practice of those Courts. On that occasion the heads of the three Courts had been pleased to delegate the consideration of the new scale to one of the Judges of each Court, assisted by a Master of each Court; that some members of the Council of this society attended several meetings of those authorities, at which the new scale was discussed and settled, and it was afterwards approved by all the Judges. The Council, aware of the heavy pressure on his Lordship's time, and that his important duties would prevent his personal attention to this subject, ventured to suggest, whether some similar course might not be adopted in the present case, and whether it might not be a useful and satisfactory method of settling a question so important, and which had become so urgent; that the proposed alterations should be considered by the Master of the Rolls or other of the Equity Judges, assisted by one or more of the Taxing Masters, and some of the chief clerks of the Judges, who are familiarly acquainted as well with the former practice as with that which the recent

changes had introduced into Equity proceedings and practice. The Council offered to contribute any information or assistance in their power which might be thought useful in considering the subject, and to attend his Lordship or any of the Judges, at any time when their aid might be required.

The Council have been informed by the Lord Chancellor's principal secretary that the subject has anxiously engaged the attention of his Lordship, and they have reason to believe that several of the officers of the Court have been consulted on the suggested alterations; but at present no decision has taken place, except that in some instances the Taxing Masters have partly relaxed the rigid rules which the clerks in Court formerly laid down, and which, in many instances, worked absolute injustice; and the Lord Chancellor, on the 21st instant, ordered that after the 2nd July the folios in Chancery shall be counted and charged for after the rate of 72 instead of 90 words, and that the charge for accounts in Chancery shall be reckoned at one word for each figure. Both these amendments were included amongst various suggestions submitted to the Lord Chancellor last year by the Council.\*

\* The Order of Court is as follows:—

1. From and after the 2nd day of July, 1854, all office copies and other copies of pleadings, proceedings, and documents in the Court of Chancery shall (except in the cases hereinafter mentioned) be counted and charged for after the rate of 72 words per folio, and where such copies or any portion thereof shall comprise columns containing figures, each figure shall be counted and charged for as one word.

2. From and after the 2nd day of July, 1854, the charge for all transcripts of accounts made in the office of the Accountant-General shall be after the rate of 2s. for each opening of such transcript, consisting of the debtor and creditor sides of the account to be entered therein.

3. The charges hereinbefore directed to be made shall be paid by means of stamps according to the General Orders of the Court of Chancery in that behalf now in force, so far as relates to documents furnished by the said Court.

**TAXATION OF COSTS.—Solicitor's Certificate of proper Master.**—By the 10th Order of 26th October, 1842, it was directed, "That all references for the taxation of costs shall be made to the Taxing Master in rotation, or if there has been any former taxation of costs in the same cause or matter, then to the Taxing Master before whom such former taxation has taken place, either on a reference from the Court or upon the request of a Master in Ordinary."

By a recent arrangement the Registrars have adopted an amended form of order whereby, instead of directing the reference "to the Taxing Master in rotation," or "to the Taxing Master to whom the cause or matter

Connected with the subject of costs, it may be mentioned that the attention of the Council having been called to a case before one of the Vice-Chancellors relating to the alleged delay in the taxation of costs before the Taxing Masters, the Council applied to them on the subject, and were informed that it is the practice of the Taxing Masters to set apart a day or some portion of several days in every week for short taxations. The arrangements which the Taxing Masters have made appear to the Council to be as beneficial to the suitors and convenient to the solicitors of the Court (at all events in the absence of any increase of the taxing force), as are practicable.

[To be continued.]

## SELECTIONS FROM CORRESPONDENCE.

### NOTICE TO QUIT.

A. HOLDS a house of B. as yearly tenant, and gives notice to B.'s collector to quit, who stated that his principal required personal service to quit from his tenants.

Is such notice good? B. considers it is not within the scope of his collector's authority to receive such a notice, which he neither directly or indirectly authorised him to do.

CIVIS A.

### WIFE'S EQUITY TO A SETTLEMENT.

A. bequeaths to trustees 2,000*l.* consols in trust to pay the interest to his wife for life, who is still living, and on her decease to his daughter B.

B. marries C. without any settlement having been executed previously thereto. C. assigns his wife's reversionary interest to D. by way of mortgage, and subsequently takes the benefit of the Act for the Relief of Insolvents.

Will B., the daughter, on the death of the

stands referred," they will in future make the reference "*to the proper Taxing Master*," thus leaving it to the solicitor to carry his order into the office of the Master to whom it has been already referred, or to get it referred to the Master in rotation, as the case may be.

In consequence of this arrangement, the Taxing Masters have given notice that it will be necessary for the solicitor, when he brings an order to the sitting Master for a reference, to certify, in the form undermentioned, that the cause or matter has not been already referred.

A. B. v. C. D.

or

In the matter of ———

I hereby certify that this cause [or matter] has not been already referred to any Taxing Master. Dated 185 .

E. F.,  
Plaintiff's Solicitor.

mother, be entitled to a settlement of the stock for her benefit and that of her children, whether she concurred with her husband in the security to the mortgagee or not? B.

## NOTES OF THE WEEK.

### ROYAL ASSENTS.

August 11, 1854.

Metropolitan Sewers.  
Literary and Scientific Institutions.  
Real Estate Charges.  
Medical Graduates (University of London).  
Prisoners' Removal.  
Episcopal and Capitular Estates' Management.  
Bankruptcy.  
Merchant Shipping Acts' Repeal.  
Incumbered Estates (West Indies).  
Legislation Council (Canada)  
12th August.  
Customs.  
Second Common Law Procedure.

Consolidated Fund Appropriation.  
Russian Government Securities.

Parliament was prorogued to the 19th Oct.

### LAW APPOINTMENTS.

Tom Taylor, Esq., Barrister-at-Law, has been appointed Secretary of the new Board of Health.

This day (11th August) the Right Honourable Sir Robert Harry Inglis, Bart., was by her Majesty's command sworn of her Majesty's most Honourable Privy Council, and took his place at the Board accordingly.

The Queen has been pleased to direct Letters Patent to be passed under the Great Seal granting the dignity of a Knight of the United Kingdom of Great Britain and Ireland unto William Ogle Carr, Esq., Chief Justice of the Supreme Court of the Island of Ceylon.—From the *London Gazette* of 15th August.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Court of Chancery.

(Coram Lord Chancellor and Lord Justice Turner).

*Bythesea v. Bythesea.* Jan. 14; Aug. 2, 1854.

WILL. — CONSTRUCTION. — GIFT OVER. — "LEAVING" CHILDREN.

*The testatrix by her will bequeathed the residue of her personal property in trust to be invested and to pay the dividends thereof to her grandson when and so soon as he should attain the age of 21, for his life, and from and after his death, in case he should leave any child or children in trust for all and every such child and children equally between them as tenants in common if more than one, and if but one then the whole for such one, to be payable to such child or children on his or their respectively attaining 21. There was a declaration that the share of each child should be a vested interest, and that in case the grandson should leave no child the residue should go over as therein mentioned. The grandson survived the testatrix, but his only son died in his lifetime, but after attaining 21, leaving a widow and a child: Held, affirming the decision of Vice-Chancellor Wood, that the gift over took effect on his death.*

This was an appeal from the decision of Vice-Chancellor Wood (reported 16 Jur. 969). It appeared that the testatrix by her will, dated Jan. 18, 1798, bequeathed the residue of her personal property in trust to invest the same, and *inter alia* to pay the dividends thereof to her grandson, when and so soon as he should attain the age of 21, for his life, and from and after his death, in case he should leave any child or children, in trust for all and every such child and children equally between them as

tenants in common if more than one, and if but one then the whole for such one, to be payable to such child or children on his or their respectively attaining 21. She also declared that the share of each child should be a vested interest, and that in case her grandson should leave no child, the residue should be held on certain trusts as therein mentioned. It appeared that the grandson survived the testatrix, but that his only son had attained the age of 21 and died intestate before his father, having married and leaving the plaintiff, his widow, and one child, who was now surviving. The Vice-Chancellor on a special case under the 13 and 14 Vict. c. 35, having held that the gift over took effect on the death of the grandson's child in his father's lifetime, this appeal was presented.

*Chandless and Shapter* in support; *Rolt and Faber* contra; *C. L. Webb* for the executors. *Cur. ad. vult.*

The Court said, that the testatrix had provided against two contingencies,—that of the grandson leaving a child or children, and of his not leaving any child. This *prima facie* meant leaving children at the period of his death, and the contingency upon which the property was given over occurred if this construction were adopted. The cases cited on the argument related to settlements, and were not applicable to the present case which related to a will, and the appeal must be dismissed, but without costs.

### Lords Justices.

*Cooper v. Tayler.* July 20, 1854.

VACATING ENROLMENT OF DECREE.—JURISDICTION.

Held, that an application for leave to give notice of motion to vacate the enrolment of

*a decree, in order to present a petition of re-hearing, should be made to the Lord Chancellor sitting alone or in the Court of Appeal.*

THIS was an application for leave to give notice of motion to vacate the enrolment of the decree in this suit, in order to present a petition of rehearing.

*Bagshawe*, in support, referred to the 6th Order of August 7, 1852, which directs, that "the Lord Chancellor, either sitting alone, or with the Lords Justices, or either of them, shall be at liberty, where it shall appear to him under the peculiar circumstances of the case to be just and expedient, to enlarge the periods hereinbefore appointed for a re-hearing or an appeal, or for an enrolment."

The Lords Justices refused the application upon the ground it should have been made to the Lord Chancellor, sitting alone or in the Court of Appeal.

*Smith v. Adams.* June 27, 1854.

PETITION OF APPEAL.—AMENDMENT.

*Leave given on ex parte application to amend a petition of appeal by adding the name of a respondent inadvertently omitted in the Registrars' Office—subject to any objection by the other parties.*

THIS was an application for leave to amend this petition of appeal from the decision of the Master of the Rolls by adding the name of a respondent which had been omitted inadvertently in the Registrars' Office.

*Horace Wright* in support.

The Lords Justices said, that the application would be granted in order to save expense, although *ex parte*, but subject to any objection from the other parties.

*James v. Rice.* July 25, 1854.

BILL PRO CONFESSO.—SERVICE OF DECREE ON DEFENDANT ABROAD.—APPOINTMENT OF RECEIVER.

*An application was refused that service of copy decree and other proceedings in a suit, taken pro confesso against the defendant, who had gone abroad in 1852, might be dispensed with; but the proceedings with reference to the appointment of a receiver to go on without such service.*

THIS was an application that service of copy decree and other proceedings in this suit on the defendant, who had gone abroad in October, 1852, might be dispensed with, and that a receiver might be appointed therein without such service. A decree had been taken *pro confesso* against the defendant.

*J. V. Prior* in support.

The Lords Justices said, that as the defendant might have returned within the jurisdiction before the expiration of the three years allowed to show cause against the decree,

when service would be required, the application to dispense therewith could not now be granted; but the proceedings with reference to the appointment of a receiver might take place without such service.

### Master of the Rolls.

*In re Holland, ex parte Rudge.* June 8, 1854.

SOLICITOR.—TAXATION OF BILL OF COSTS.—COMMON ORDER.—SPECIAL CIRCUMSTANCES.—PAYMENT.

*The common order was obtained for the taxation of a solicitor's bill of costs, without stating the circumstances that it had been delivered on November 28, and that a debtor and creditor account had been delivered at a meeting on December 3, at which the client's solicitor was present, and signed at a subsequent meeting on December 5, in which the bill of costs and disbursements were charged: Held, that a special order was necessary, and it was discharged.*

*Quære, whether the circumstances amounted to a payment of the bill of costs.*

IT appeared that Mr. Holland, of Upton-upon-Severn, had forwarded to Mr. Rudge, on November 28, 1853, his bill of costs in reference to certain mortgage transactions, and that upon his meeting Mr. Rudge and his solicitor, on December 3, by appointment to complete the transaction, he had handed in a debtor and creditor account, charging the amount of his bill of costs and disbursements, and that Mr. Rudge had signed the account at a meeting which took place two days afterwards. Mr. Rudge having obtained in April last the common order to tax, this motion was made to set it aside on the ground of the suppression of facts, and that after payment a special order should have been obtained.

*Elderton* in support; *Shebbeare*, contra.

The Master of the Rolls said, that, without deciding whether there had been a payment of the bill, the facts formed special circumstances under which a common order could not be obtained, and it would therefore be discharged.

*Priddie v. Field.* July 15, 1854.

WILL.—ANNUITY.—WHETHER CLEAR OF LEGACY DUTY.

*A testator directed his executor to raise and pay an annuity or clear yearly sum of 100l. to A. W., and upon her death, leaving issue, the principal to be paid among her children equally, and in default thereof to fall into the residue: Held, that the annuity was subject to legacy duty.*

THE testator, by his will, directed his executor to raise and pay an annuity or clear yearly sum of 100l. to Anne Wood, and upon her death leaving issue the principal to be paid among her children equally, and in default thereof to fall into the residue. The question now arose, whether the annuity was payable free of legacy duty.

*Rogers for the plaintiff; G. Lake Russell for the defendants.*

*Cur. ad. vult.*

The Master of the Rolls said, that in accordance with the decision of *Sanders v. Kiddell*, 7 Sim. 536, the word "clear" did not refer to legacy duty, but only that a sufficient amount should be raised to produce the clear yearly sum of 100*l.*, and which should once for all be separated from the general estate for the successive takers. The annuity will therefore be subject to duty.

**Vice-Chancellor Kindersley.**

*Bennet v. Powell.* July 29, 1854.

**TAKING BILL PRO CONFESSO AGAINST ABSCONDING DEFENDANT.**

*A motion was granted under the 77th Order of May 8, 1845, to take pro confesso a bill against a defendant who had appeared but taken no further proceeding, and could not be found, although inquiries had been made of his wife at his dwelling-house.*

THIS was a motion under the 77th Order of May 8, 1845, to take this bill *pro confesso* against the defendant, who had appeared thereto, but taken no further proceedings, and could not now be found, although inquiries had been made of his wife at his dwelling-house.

*Bovill* in support.

The Vice-Chancellor granted the motion.

*In re Ingram's Trust.* Aug. 3, 1854.

**TENANT FOR LIFE.—COSTS OF PETITION FOR PAYMENT OF DIVIDENDS ON FUND IN COURT.**

*Held, that the costs of a petition for payment to a tenant for life, of the dividends on a fund in Court, are payable out of the income, and not out of the corpus.*

*Renshaw* appeared in support of this petition for payment of the dividends on a fund in Court to the tenant for life. The question now arose as to the payment of the costs.

The Vice-Chancellor held, that they were payable out of the income, and not out of the corpus.

<sup>1</sup> Which directs, that "in cases where any defendant, either being or not being within the jurisdiction of the Court, does not put in his answer in due time after appearance entered by or for him, and the plaintiff is unable, with due diligence, to procure a writ of attachment, or any subsequent process for want of answer to be executed against such defendant, by reason of his being out of the jurisdiction of the Court, or being concealed, or for any other cause, than such defendant is, for the purpose of enabling the plaintiff to obtain an order to take the bill *pro confesso*, to be deemed to have absconded to avoid or to have refused to obey the process of the Court."

**Vice-Chancellor Stuart.**

*Howell v. Evans.* July 6, 1854.

**STAY OF PROCEEDINGS UNDER DECREE ENROLLED.—APPEAL TO HOUSE OF LORDS.**

*An application was refused to stay the proceedings in a suit to enforce the specific performance of an award, and in which the decree had been enrolled, for the purpose of appealing to the House of Lords, on the ground that the omission to give notice of appeal had arisen from the illness of the applicant's solicitor.*

THIS was an application to stay the proceedings in this suit to enforce the specific performance of an award, and in which the decree had been enrolled. It was intended to appeal to the House of Lords, but in consequence of the illness of the applicant's solicitor the period within which notice of appeal must be lodged, had elapsed.

*Mahins* and *J. T. Wood*, in support, offered to pay the amount of taxed costs into Court.

The Vice-Chancellor (without calling on *Wigram* and *Tripp* contra) said, the motion must be refused with costs.

**Vice-Chancellor Stuart.**

*Clarke v. Gill.* July 20, 1854.

**EQUITY JURISDICTION IMPROVEMENT ACT.—FILING DEPOSITIONS AT RECORD OFFICE.**

*Held, that the examiner appointed on a motion for an injunction to cross-examine witnesses who had made affidavits, is bound under the 15 & 16 Vict. c. 86, s. 34, to transmit to the office of Records and Writs the depositions from time to time, on the conclusion of the witness's examination, as on an examination with a view to a hearing.*

THIS was an application for the direction of the Court upon the question, whether the examiner appointed on a motion for an injunction to cross-examine witnesses who had made affidavits, is bound under the 15 & 16 Vict. c. 86, s. 34,<sup>1</sup> to transmit to the office of Records and Writs the depositions from time to time on the conclusion of a witness's examination, in order that copies might be obtained.

*Southgate* for the plaintiff; *Rosburgh* for the defendant.

The Vice-Chancellor said, that the section applied to depositions taken on interlocutory motions as well as with a view to the hearing, and directed accordingly.

<sup>1</sup> Which enacts that "when the examination of witnesses before any examiner shall have been concluded, the original depositions, authenticated by the signature of such examiner, shall be transmitted by him to the Record Office of the said Court, to be there filed, and any party to the suit may have a copy thereof, or of any part or portion thereof, upon payment for the same in such manner as shall be provided by any General Order of the Lord Chancellor in that behalf."

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

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SATURDAY, AUGUST 26, 1854.
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### ARRANGEMENT OF SOLICITORS' BUSINESS, AND PLAN OF ACCOUNTS.

PARLIAMENT having been prorogued and the Courts adjourned, great activity does or ought to prevail in the offices of Attorneys and Solicitors in making out the accounts of the legal year. We probably cannot, therefore, render a more acceptable service than submitting to them a very comprehensive plan of solicitors' accounts, in compiling which we have been kindly aided by a solicitor of great experience and extensive practice.

We are the more disposed to devote some space to this subject for the purpose of removing a prejudice which exists to the serious injury of our brethren, namely, that "Lawyers are bad accountants." Now, a moment's reflection ought to convince any one that an attorney, even in a moderate extent of practice, must necessarily possess considerable skill and experience in the keeping of accounts. The money which passes through his hands in the ordinary course of his business, and the sums which are intrusted to him on behalf of his clients, amount to several thousands annually. In many large offices the gross amount of bills of costs varies from 20,000*l.* to 40,000*l.* a year, and the cash transactions frequently exceed 100,000*l.*, and are sometimes half a million or more.

It is evident, therefore, that a regular system of book-keeping must exist in every solicitor's office, and it will be observed by the Annual Report of the Council of the Incorporated Law Society that amongst other improvements in Legal Education, it is proposed to examine the Candidates for admission on the Roll in arithmetic and

book-keeping. Let us hear no more, therefore, of the inability of lawyers to comprehend any kind of accounts,—banking, mercantile, or any other.

The plan which we have to submit to our Readers will probably be considered by those who are just commencing practice, or who have attained only a small extent of business, as too elaborate and complicated; but we deem it expedient to lay the whole scheme before them, for we are persuaded it will be generally useful to many practitioners, and every one will be benefited by selecting such portions as are adapted to the circumstances connected with his individual practice.

We proceed, then, to state the details of our Plan of Business Books and Account Books.

1. *Cause and Business Lists* :—A Cause and Business List to be kept in the office of each principal, containing all the causes and business in all the departments,—each class of causes or business to be kept distinct in the list under the proper heads, that is to say :—

1. Actions in the Common Law Courts.
2. Suits in Chancery.
3. Conveyancing.
4. Trusts and executorships.
5. Arbitrations.
6. Bankruptcy.
7. Miscellaneous business.

Thus each principal will not be ignorant of or forget any business in the office, but be able to review the causes and business either every evening or every week, and thereby keep alive the attention of himself and clerks to everything occurring and passing in the office, and in case of being addressed by a client he will have no difficulty in answering him. To appear to a client ignorant of the business in the office

under the care of principals betrays great negligence.

2. *Diary of Appointments and Short Notes of Business done*.—Each principal and the chief clerk in each department to keep a diary containing his daily appointments. In this diary a very short entry (by way of key to a charge in his business book) to be made of the name of the client and of any business done for him, the moment the client has left the office, or in the evening or morning, or as soon as possible, so that there may be no omission or forgetfulness. This key is of the greatest importance, being (though slight) the foundation of all subsequent entries.

3. *A Business-book* to be kept by each principal and each clerk, in which every business done or attendance made should be entered, with full particulars and with the result every day, or as soon as possible, for the sooner done the better will be the recollection to make the charge. To omit this duty is pregnant with loss to the concern, and cannot be justified.

The entries in this business-book will be a chronicle of events and of what has been done, which may at all times afterwards be safely resorted to for information.

The business book of each clerk will contain the cash received and disbursed by him.

As many businesses occupy a great deal of time in the perusal and arrangement of papers and otherwise, it is important to enter in a column in the daily business-book of each principal or clerk the time occupied by any business, so as to regulate and justify the charge to be made.

The necessity for each principal and clerk to have a business-book is very apparent, as it affords a facility in making the requisite entries which might otherwise be impeded and delayed and the charge lost, if all parties were to make their entries in the same book, and consequently to wait for one another.

In the weekly report of the time, up to which the business book and disbursement book of each clerk is completed, a note should be added, whether or not the time employed upon any business is inserted regularly in the clerks' business book.

4. *Letters*.—When a letter is received there should be an entry made upon it of the department to which it refers, and the clerk in that department is answerable for its being attended to and answered.

The principals should read all letters, and to prove that they have done so should

put their initials on each letter. One of the clerks, under the direction of a principal or a managing clerk, to be answerable for the letters being submitted to, and marked by the partners day by day.

Letters should be indorsed, when answered, with the names of parties, the business to which they relate, and their dates, and put away with the papers connected with them. Letters not having papers connected with them are put away yearly with the other papers and arranged in their bundle and according to their dates.

5. *A Day-book* to be kept, in which should be entered under the head of each client's name all the business, &c., done for him, as entered in the business-book, with the time employed by the clerk in doing it; and if there be more businesses than one for each client, a distinct head in the day-book should be opened for each business by the name of the client. By this means all matters that relate to each business of a client will be kept together. The entries may either be turned into a bill, if practicable, or the bill may be drawn out from the entries. Before the drawing of which bill the entries in the day-book are to be gone over and numbered in the order in which they should be charged. When bills are drawn out and copied and completed, the drafts of the bills are put away, being first indexed in a book kept for the purpose, or the drafts may be bound together as they may be copied, or any particular bill might be copied into a bill-book.

6. *A Bill Register*.—Book to be ruled with columns, to be made up and posted every half-year, and occasionally when necessary during the half. This book is to contain a complete list of all clients for whom business may have been transacted during the half-year, which list should be taken from the day-book. At the end of each year a new and complete list embracing the past year, so far as concerns bills not delivered, to be made up in order, that the arrears may be clearly seen.<sup>1</sup>

7. *A rough General Cash-book and fair General Cash-book* to be kept, in which should be entered all cash received and all cash paid—those receipts and payments which are on account of clients to be carried to the debit or credit of the clients' accounts in the ledger—those payments which are on account of business or of management

<sup>1</sup> Directions for making out a bill will be found at the conclusion of these remarks, see page 316.

to be posted to the accounts of the respective parties to whom they are paid, and from thence those that relate to business to be carried to the debit of "Business Disbursement Account," and those that relate to management to "Management Charges' Account" or "Charges' Account."

This cash-book will show the balance in hand or at the bankers, and will be examined with the postings in the ledger every week or month.

The cash-book is to be so kept as to be a counterpart of the banker's account by having separate columns for cash paid into, and cash drawn out from, the bankers.

8. *A General Disbursement-book*, in which are to be debited all sums issued from the general cash-book on account of petty cash, and to be credited all the charges and disbursements paid through petty cash, whether for management or on account of business. Each clerk will have his petty cash disbursement-book, the contents of which will be the materials for the general disbursement-book, and will be entered accordingly and posted from thence into the day-book, excepting that the charges of management do not go into the day-book. This general disbursement-book is to be balanced half-yearly (the clerk's book being balanced weekly), by deducting the amount of disbursements for the half year from the amount of the sums debited as received from the general cash, and the result then carried to an account in the ledger, entitled "Petty Cash"—and the balance of cash, if any, not repaid to be transferred to the account of the individuals from whom they are due. If a principal, to the debit of his account in the private ledger—if a clerk, to the debit of his account, and also to the debit of Management-charges' Account, and the amount of disbursements to be carried to the debit of Business Disbursements' Account.

9. *A Stationer's-book*, to be kept, and the entries therein checked and posted into the day-book, and the amount of each year having been credited in the Dr. and Cr. account opened with the stationer in the ledger to be debited to the Business Disbursement Account.

10. *A General Ledger* to be kept, which should be in part a transcript of the cash-book, by having a Dr. and Cr. account with every individual, from or to whom moneys are received or paid, with the addition of a debit in each client's account of the amount of any bill delivered, and of a credit in the account of any other person or of the na-

ture and amount of the debt or charge in respect of which a payment has been made. The payments on account of business and those on account of management to be also carried to the debit of Business Disbursements' Account, or Management Charges' Account, respectively.

11. *Profits or Balance-book* to be kept, in order to ascertain and show as nearly as circumstances will admit at the end of every year, the profits of the business done during the year. In this book, the following accounts should be entered, viz.: an account to be opened, commencing in April in every year, and ending in the same month, to be headed—

"*Business done Account*."—In this account, when a bill is sent in for business done in the current year, the amount of the bill is to be charged in the ledger to the clients' account, and then credit to be given for the amount, quoting in either account the folio of the other. This "Business Account," will, in the end of the year, record all the business done, for which bills have been sent in. At the end of the year make out (or complete such as have been partly made out) all bills which have not been made out, and consequently not sent in or charged to the client; then by adding up the amount of all the draft bills for business done during the year which have not been delivered, an estimate may be made of their amount, and instead of debiting the client's account in the ledger, carry the estimated amount of each client's bill to the debit of another account to be opened in the same "Profits" book.

Such account to be entitled "*Unfinished Bills' Account*." When this is so debited, then enter the amount to the credit of the "Business done Account" for the same year, and the "Business done Account" will then exhibit the gross amount of all the bills for all the business done in the year. Subsequently, as the bills which have been so estimated are sent in to the clients, debit the client's account in the ledger with the amounts, and also credit the amounts in the account of bills not sent in, or "Unfinished Bills' Account." After all such estimated bills shall have been delivered and debited in the ledger, and credited in the "Unfinished Bills' Account," the alterations of amount in any such bills, arising from revision of the charges or otherwise subsequently to the end of the year when the estimate was made, will then result in an increased or decreased amount of profit upon the account of bills not sent in affecting, and having ultimately to be carried to, the general profit account for that year.

In the same book of "Profits" another account should be opened in each year, to be entitled "*Business Disbursements' Account*." In this account should be charged all disbursements relating to business which shall



have been paid out of the general cash and entered in the cash-book, and posted in the ledger. To these disbursements should be added the amount of the stationer's account, and of the disbursements entered in the general disbursement book for the year, and thus will be shown the total of the disbursements in respect of the business recorded in the two preceding accounts to have been done.

In the same book of "Profits" another account should be opened for each year, entitled "*Management Charges' Account*," in which should be charged all sums as they are paid in respect of management out of the general cash and posted into the ledger.

When these accounts have all been completed, then close "*Business Disbursements' Account*," by transferring the amount to the debit of "*Business done Account*," the balance of which will show the net amount of business done, minus the cash out of pocket in respect of such business. Then also close the "*Business done Account*," by a transfer to another account to be opened in the same book, and to have reference to the same year, and to be entitled "*Profits and Loss Account*." Having done that, close also the "*Management Charges' Account*" by a transfer to "*Profits' Account*,"—also close any interest account there may be by a like transfer to the debit of "*Profits' Account*." Then the "*Profits' Account*" will show clearly in a few items the net profit upon a year's business subject to the realisation of bills not paid. The balance of the "*Profits' Account*" should then be struck, and brought down with an explanation, that it is the profit subject to any deficiency that may afterwards arise, either from revisions of bills charged in the "*Unfinished Bills' Account*," or from bad debts, or from relinquishments, or taxations, or otherwise. For the purpose of showing what deficiencies are to be charged against this balance of "*Profits' Account*," there should be opened in the same book an account to be entitled "*Bad Debts and Relinquishments*," in which should be debited all such outstanding debts as may from time to time be ascertained to be bad, or as may have been either wholly or in part relinquished; this account to be ultimately closed by a transfer of the account to "*Profits' Account*."

In the *Profits' Book* or *Balance Book* should be entered an account headed "*Balances' Account*," by which the result of the ledger entries will be shown, thus the balance due to each partner, or to any other person, together with the amount of bills remaining due to the firm, will form the credit side of the account, and the debts due from other persons to the firm, together with the profits of the partnership and the balance of cash at the bankers or in hand, will form the debit side of the account.

12. An *Account Current Book* should be kept. When an account is rendered to a client it may not be necessary to send him all the entries in the account in the

ledger. An account current, therefore, proper to be rendered to the client should be made up in the *Account Current Book* and a copy rendered to the client, so that the statements or account current, as rendered, may always be known, but this account current should include all cash received, and all cash paid, to prevent the executors of a client, or the client alleging moneys to have been received which were not credited, and which might occasion unpleasantness and trouble in bringing forward and showing vouchers for the payments in discharge of the moneys so received.

13. A *Private Ledger* to be kept in which shall be entered the Dr. and Cr. accounts to each partner, the one containing his capital account, and the other his drawing account against profits, the money drawn is entered in the cash-book, and posted from thence to the drawing account. The drawing account is credited with the proportion of anticipated profits of each partner, until a final and actual amount of profits be ascertained, and when the profits are ascertained then the respective accounts of the partners are debited or credited with any proportion of the profits beyond or not equal to the anticipated profits.

We lastly add the following directions for making out Bills:—

1. Examine whether any former bill has been made out in the same business, or to the same party, and if so thoroughly understand the same.
2. Ascertain by search if any draft bill has already been prepared, and if so add to, amend or alter such draft, or begin *de novo*.
3. Inspect all the entries in the day-books from first to last.
4. Collect all the papers together, and understand the leading points of business.
5. Arrange the papers according to their dates, and indorse their contents, if not already done.
6. Look up and examine all letters written to and by the firm.
7. Arrange all the letters according to their dates, and indorse the names of the parties from whom they came, the dates, and heads of their contents.
8. Then begin the bill making charges fuller (if necessary) than the entries, and draw the bill on draft paper bookwise, with a small margin for binding.
9. If the bill relate to Chancery business look for a precedent in the Chancery costs, and read the charges therein, from beginning to end.
10. If in any of the Common Law Courts, the like.
11. If in Bankruptcy look to bills made out in similar business, and read them through-out.

12. If in going through a bill there should be any blanks for folios, or any queries, put them on a sheet of paper and annex it to the draft to be filled up, and answered before the bill is considered as drawn. If the bill relate to different suits, &c., keep each distinct.

13. In drawing a bill see that the history or chain is preserved throughout, so that on reading it, the nature of the business, and what has been done may be clearly seen and understood, but be cautious so that the charges or statements do not cast blame or excite any improper remarks on any one.

14. In charging for letters, be particular in stating their contents shortly, and if from their contents it should appear that attendances must have been had or business done which may not have been posted, supply them, noting in the draft that the attendances or business are not in the day-books.

15. In charging an attendance on any business, look to the consequences of such attendance or business, or whatever follows from the one or arises from the other, and take care to include the same, although the entries may be silent or incomplete, but noting as in the last article.

16. Let the papers be put away and indexed (in the register of papers) when the bill is made out, and let all papers taken out of a bundle already indexed, be returned to the bundle when done with.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts of the present Session printed in the present Volume, with an Analysis to each, will be found at the following pages:—

- Income Tax, cc. 17, 24, pp. 46, 134, *ante*.
- Commons' Inclosure, c. 9, p. 64.
- County Court Extension, c. 16, 121.
- Registration of Bills of Sale, c. 36, p. 216.
- Warwick Assizes, c. 35, p. 218.
- Attendance of Witnesses, c. 34, p. 235.
- Evidence in Ecclesiastical Courts, c. 47, p. 254.
- Commons' Inclosure (No. 2), c. 48, p. 254.
- Cruelty to Animals, c. 60, p. 275.
- Ecclesiastical Jurisdiction, c. 65, p. 276.
- Highway Rates, c. 52, p. 276.
- Turnpike Trusts' Arrangements, c. 51, p. 276.
- Admiralty Court, c. 78, p. 295.
- Borough Rates, c. 71, p. 298.
- Acknowledgment of Deeds by Married Women, c. 75, p. 299.

### STAMP DUTIES.

17 & 18 VICT. c. 83.

Stamp duties on instruments mentioned in schedule to this Act, payable under other

Acts, repealed, and the duties named in said schedule granted in lieu thereof; s. 1.

The new duties by this Act granted to be denominated stamp duties, and to be under the care of Commissioners of Inland Revenue; powers and provisions of former Acts to be in force; s. 2.

Duties on bills drawn out of the United Kingdom to be denoted by adhesive stamps; s. 3.

Bills purporting to be drawn abroad deemed for the purposes of this Act to be so drawn; s. 4.

The holder of a bill drawn out of the United Kingdom to affix an adhesive stamp thereon before negotiating it; penalty for negotiating such bill without a stamp affixed or neglecting to cancel such stamp; s. 5.

Penalty for drawing and issuing, or transferring or negotiating bills purporting to be drawn in a set, and not drawing the whole number of the set; penalty on taking or receiving such bills; s. 6.

Unstamped drafts on bankers not to be circulated beyond 15 miles of the place where made payable; penalty on persons offending; s. 7.

Drafts lawfully issued unstamped may by affixing thereto an adhesive stamp be negotiated beyond the distance of 15 miles; s. 8.

Provisions of 17 Geo. 3, c. 30, as extends to drafts on bankers repealed; s. 9.

Adhesive stamps denoting the duty of 1d. may be used for receipts or drafts without regard to their special appropriation; s. 10.

What shall be deemed bank notes within the meanings of 7 & 8 Vict. c. 32, and 8 & 9 Vict. cc. 38 and 37; s. 11.

All bills, drafts, and notes deemed bank notes under the above recited Acts liable to stamp duties, &c.; s. 12.

Exemption from receipt stamp duty of letters acknowledging receipt of bills, &c., repealed; s. 13.

Receipts for money paid to the Crown exempted from stamp duty; s. 14.

13 & 14 Vict. c. 97; 16 & 17 Vict. c. 63; Relief to persons who have made duplicates of conveyances described in 16 & 17 Vict. c. 63; s. 15.

Deeds made for several valuable considerations to be chargeable in respect of each; s. 16.

Commissioners of Inland Revenue, before assessing the duty upon any deed, may require proof that the facts upon which the duty depends are truly stated; s. 17.

The affidavit not to be used for any other purpose; s. 18.

48 Geo. 3, c. 149; indemnity from penalties for omitting to state the full purchase-money in assignments on the sale of goodwill; s. 19.

Stamp duty on licences to pawnbrokers in Dublin reduced; s. 20.

Contracts to serve as artificers, servants, &c., in the colonies exempted from stamp duty; s. 21.

Public maps and documents not to be liable to stamp duty by reason of their being referred to in deeds or writings; s. 22.

Leases for a period less than a year to be chargeable with stamp duty on the rent reserved; s. 23.

Allowance on the purchase of stamps not exceeding the rate of 1s. duty for drafts, bills, and notes; s. 24.

No charge to be made for paper on sale of bill or note stamps where the rate of duty does not exceed 1s.; s. 25.

Allowance for stamps rendered useless by this Act; s. 26.

Instruments admissible in evidence, though not properly stamped; s. 27.

The following are the Title and Sections of the Act:—

An Act to amend the Laws relating to the Stamp Duties. [9th August, 1854.]

Whereas it is expedient to repeal the stamp duties now payable in respect of the several instruments, matters, and things mentioned or described in the schedule to this Act annexed, and to impose other stamp duties in lieu thereof, and otherwise to amend the laws relating to stamp duties; be it therefore enacted as follows:—

1. From and after the 10th day of October, 1854, the stamp duties now payable in Great Britain and Ireland respectively, under or by virtue of any Act or Acts of Parliament for or in respect of the several instruments, matters, and things mentioned or described in the schedule to this Act annexed, and whereon other duties are by this Act granted, shall respectively cease and determine, and shall be and the same are hereby repealed; and in lieu thereof there shall be granted, charged, and paid in and throughout the United Kingdom of Great Britain and Ireland, unto and for the use of her Majesty, her heirs and successors, upon and in respect of the several instruments, matters, and things described or mentioned in the said schedule, or upon or in respect of the vellum, parchment, or paper upon which any of them respectively shall be written, the several duties or sums of money specified and set forth in the said schedule, which said schedule, and the several provisions, regulations,

and directions therein contained, shall be deemed and taken to be part of this Act, and shall be applied, observed, and put in execution accordingly: provided always, that nothing herein contained shall extend to repeal or alter any of the said stamp duties now payable in relation to any bill of exchange, promissory note, or other instrument which shall have been drawn, made, or signed, or which shall bear date before or upon the said 10th day of October, 1854.

2. The said duties by this Act granted shall be denominated and deemed to be stamp duties, and shall be under the care and management of the Commissioners of Inland Revenue for the time being; and all the powers, provisions, clauses, regulations, directions, allowances, and exemptions, fines, forfeitures, pains, and penalties contained in or imposed by any Act or Acts or any schedule thereto, relating to any duties of the same kind or description heretofore payable in Great Britain and Ireland respectively, and in force at the time of the passing of this Act, shall respectively be in full force and effect, with respect to the duties by this Act granted, and to the vellum, parchment, and paper instruments, matters, and things charged and chargeable therewith, and to the persons liable to the payment of the said duties, so far as the same are or shall be applicable, in all cases not hereby expressly provided for, and shall be observed, applied, allowed, enforced, and put in execution for and in the raising, levying, collecting, and securing of the said duties hereby granted, and otherwise in relation thereto, so far as the same shall not be superseded by and shall be consistent with the express provisions of this Act, as fully and effectually to all intents and purposes as if the same had been herein repeated and specially enacted, *mutatis mutandis*, with reference to the said duties by this Act granted.

3. The duties by this Act granted in respect of bills of exchange drawn out of the United Kingdom shall attach and be payable upon all such bills as shall be paid, indorsed, transferred, or otherwise negotiated within the United Kingdom wheresoever the same may be payable, and the said duties shall be denoted by adhesive stamps, to be provided by the Commissioners of Inland Revenue for that purpose, and to be affixed to such bills as hereinafter directed.

4. Every bill of exchange which shall purport to be drawn at any place out of the United Kingdom shall for all the purposes of this Act be deemed to be a foreign bill of exchange drawn out of the United Kingdom, and shall be chargeable with stamp duty accordingly, notwithstanding that in fact the same may have been drawn within the United Kingdom.

5. The holder of any bill of exchange drawn out of the United Kingdom, and not having a proper adhesive stamp affixed thereon as herein directed, shall, before he shall present the same for payment, or indorse, transfer, or in any manner negotiate such bill, affix thereon a proper adhesive stamp for denoting the duty

by this Act charged on such bill; and the person who shall indorse, transfer, or negotiate such bill shall, before he shall deliver the same out of his hands, custody, or power, cancel the stamp so affixed by writing thereon his name or the name of his firm and the date of the day and year on which he shall so write the same, to the end that such stamp may not be again used for any other purpose; and if any person shall present for payment, or shall pay or indorse, transfer or negotiate any such bill as aforesaid whereon there shall not be such adhesive stamp as aforesaid duly affixed, or if any person who ought as directed by this Act to cancel such stamp in manner aforesaid shall refuse or neglect so to do, such person so offending in any such case shall forfeit the sum of 50*l.*; and no person who shall take or receive from any other person any such bill as aforesaid, either in payment or as a security, or by purchase or otherwise, shall be entitled to recover thereon, or to make the same available for any purpose whatever, unless at the time when he shall so take or receive such bill there shall be such stamp as aforesaid affixed thereon and cancelled in the manner hereby directed.

6. If any person shall within the United Kingdom draw and issue any bill of exchange payable out of the United Kingdom purporting to be drawn in a set, and shall not draw and issue on paper duly stamped as required by law the whole number of bills which such bill purports the set to consist of, or if any person shall within the United Kingdom transfer or negotiate any such bill of exchange as aforesaid purporting to be drawn in a set, and shall not at the same time transfer or deliver on paper duly stamped as aforesaid, the whole number of bills which such bill purports the set to consist of, every such person so offending in any of such cases shall forfeit the sum of 100*l.*; and if any person shall take or receive in the United Kingdom any such bill as aforesaid, either in payment or as a security or by purchase or otherwise, without having transferred or delivered to him duly stamped as aforesaid the whole number of bills which such bill purports the set to consist of, he shall not be entitled to recover on any such bill, or to make the same available for any purpose whatever.

7. And whereas, under and by virtue of certain Acts relating to stamp duties, certain drafts or orders for the payment of any sum of money to the bearer on demand, drawn upon any banker or person acting as a banker residing or transacting the business of a banker within 15 miles of the place where such drafts or orders are issued, are exempted from all stamp duty, and it is expedient to prevent the negotiating or circulating of such drafts or orders unstamped at any place beyond the distance of 15 miles from the place where the same are made payable: be it enacted, that no such draft or order as aforesaid shall, unless the same be duly stamped as a draft or order, be remitted or sent to any place beyond the

distance of 15 miles in a direct line from the bank or place at which the same is made payable or be received in payment, or as a security, or be otherwise negotiated or circulated at any place beyond the said distance; and if any person shall remit or send any draft or order not duly stamped as aforesaid to any place beyond the distance aforesaid, or shall receive the same in payment or as a security, or in any manner negotiate or circulate the same at any such last-mentioned place, he shall forfeit the sum of 50*l.*

8. Provided always, that it shall be lawful for any person who shall receive any such draft or order as aforesaid at any place within the said distance of 15 miles from the bank or place at which the same is made payable, which draft or order shall have been lawfully issued unstamped, to affix thereto a proper adhesive stamp, and to cancel such stamp by writing thereon his name or the initial letters of his name, and thereupon such draft or order may lawfully be received and negotiated at any place beyond the distance aforesaid, anything herein contained notwithstanding.

9. And whereas an Act was passed in the 17 Geo. 3, c. 30, for restraining the negotiation of promissory notes and inland bills of exchange under a limited sum: be it enacted, that the said Act, and any Act or Acts continuing or perpetuating the same, shall, so far as they respectively extend or may be deemed or construed to extend to any draft on a banker for payment of money held for the use of the drawer, be and the same are hereby repealed.

10. The adhesive stamps provided by the Commissioners of Inland Revenue for denoting the duty of 1*d.* payable on receipts and on drafts or orders for the payment of money to the bearer or to order on demand respectively may lawfully be used for the purpose of denoting the like amount of duty either on a receipt or on such draft or order as aforesaid, without regard to the special appropriation thereof for the other of such instruments by having its name on the face thereof, anything in any Act or Acts contained to the contrary notwithstanding.

11. And whereas an Act was passed in the 7 & 8 Vict. c. 32, to regulate the issue of bank notes; and an Act was passed in the 8 & 9 Vict. c. 38, to regulate the issue of bank notes in Scotland; and another Act was passed in the last-mentioned years, c. 37, to regulate the issue of bank notes in Ireland; and in order to prevent evasions of the regulations and provisions of the said respective Acts it is expedient to define what shall be deemed to be bank notes within the meaning thereof respectively: be it enacted, that all bills, drafts, or notes (other than notes of the Bank of England) which shall be issued by any banker or the agent of any banker for the payment of money to the bearer on demand, and all bills, drafts, or notes so issued, which shall entitle or be intended to entitle the bearer or holder thereof, without endorsement, or without any further or other endorsement than may be

thereon at the time of the issuing thereof, to the payment of any sum of money on demand, whether the same shall be so expressed or not, in whatever form and by whomsoever such bills, drafts, or notes shall be drawn or made, shall be deemed to be bank notes of the banker by whom or by whose agent the same shall be issued within the meaning of the said three several Acts last mentioned, and within all the clauses, provisions, and regulations thereof respectively.

12. All bills, drafts, and notes which by or under this Act, or the said three several Acts last mentioned, or any of them respectively, are declared or deemed to be bank notes, shall be subject and liable to the stamp duties, and composition for stamp duties, imposed by or payable under any Act or Acts in force upon or in respect of promissory notes for the payment of money to the bearer on demand; and all clauses, provisions, regulations, penalties, and forfeitures contained in any Act or Acts relating to the issuing of such promissory notes, or for securing the said stamp duties and composition respectively, or for preventing or punishing frauds or evasions in relation thereto, shall respectively be deemed to apply to all such bills, drafts, and notes as aforesaid, and to the stamp duties and composition payable upon or in respect thereof, anything in this Act, or any other Act or Acts, to the contrary notwithstanding.

13. And whereas under and by virtue of certain Acts relating to stamp duties, letters by the General Post acknowledging the safe arrival of any bills of exchange, promissory notes, or other securities for money are exempted from the stamp duty granted and imposed on receipts or discharges given for or upon the payment of money: be it enacted, that the said exemption shall be and the same is hereby repealed.

14. And whereas under and by virtue of the laws in force the stamp duty on receipts given for or upon the payment of money to or for the use of her Majesty, her heirs or successors, is made payable by the person requiring any such receipt: be it enacted, that all such receipts as last mentioned shall be and the same are hereby exempted from stamp duty.

15. And whereas by an Act passed in the 13 & 14 Vict. c. 97, certain reduced rates of stamp duty were granted and made payable under the head or title of "Duplicate or Counterpart" in the schedule thereto annexed: and whereas by an Act passed in the 16 & 17 Vict. c. 63, certain stamp duties were granted and made payable upon conveyances, charters, dispositions, and contracts, described under the head or title of "Conveyance" in the schedule to the said last-mentioned Act, but no provision is made for charging the duplicates or counterparts of the said conveyances, charters, dispositions, and contracts with the said reduced duties, and it is expedient to give such relief in that respect as hereinafter mentioned: be it enacted, that it shall be lawful for the Commissioners of Inland Revenue, and they

are hereby required, upon production to them of any such conveyance, charter, disposition, or contract duly stamped, and of the duplicate or counterpart thereof stamped for denoting the amount of duty chargeable upon a duplicate or counterpart under the said Act of the 13 & 14 Vict., to stamp the said duplicate or counterpart with the particular stamp directed by the said last-mentioned Act to be impressed upon a duplicate or counterpart for denoting or testifying the payment of the full and proper stamp duty on the original deed or instrument; and if the said duplicate or counterpart shall be stamped with any *ad valorem* stamp duty of greater amount than the amount of stamp duty so chargeable as aforesaid on a duplicate or counterpart, the said Commissioners shall allow and repay such excess of stamp duty, and rectify the stamps accordingly, and thereupon such duplicate or counterpart shall be deemed to be duly stamped.

16. And where any conveyance, charter, disposition, or contract described in the schedule to this Act shall be made partly in consideration of such annual sum as in the said schedule is mentioned, and partly in consideration of a sum of money or stock as mentioned under the head or title of "Conveyance" in the schedule to the said Act of the 13 & 14 Vict., such conveyance, charter, disposition, or contract shall be chargeable with the *ad valorem* stamp duties granted by the said Acts respectively in respect of each of the said considerations; and in any case where any deed or instrument which shall be chargeable with any *ad valorem* stamp duty in respect of any sum of money yearly or in gross or any stock or security therein mentioned shall be made also for any further or other valuable consideration, such deed or instrument shall be chargeable (except where express provision to the contrary is or shall be made in any Act of Parliament) with such further stamp duty as any separate deed or instrument made for such last-mentioned consideration alone would be chargeable with, except progressive duty.

17. And to prevent fraud and evasion of stamp duty in any case where application is made to the Commissioners of Inland Revenue to assess and charge the stamp duty to which any deed or instrument is liable, or to impress on any deed or instrument the particular stamp provided to denote the payment of the full and proper duty on the same or on any other deed or instrument, or that any deed or instrument is not liable to any stamp duty, it shall be lawful for the said Commissioners to require such evidence by affidavit as they may deem necessary in order to show to their satisfaction the quantity of words contained in any such deed or instrument, and whether or not the consideration, or any definite or certain sum or sums of money, stock, or other valuable matter or thing capable of being ascertained and set forth, or any other facts, upon the full or proper statement of any of which matters and things in such deed or instrument the stamp duty which shall be or which ought to be pay-

able thereon shall in any measure depend, is or are truly and fully set forth therein; and it shall be lawful for the said Commissioners and their officers in any case to refuse to impress on any such deed or instrument, or any duplicate or counterpart respectively, the particular stamp to denote the payment of the full and proper duty as aforesaid, except on payment of the full stamp duty which would be chargeable on such deed or instrument if all or any of such matters and things aforesaid had been truly set forth therein.

18. Provided, that no such affidavit shall be used against any person making the same in any proceeding whatever, except only in any inquiry as to the stamp duty with which such deed or instrument is chargeable, and every such person shall, upon payment of such full stamp duty as aforesaid, be relieved from any penalty, forfeiture, or disability he may have incurred by reason of the omission to state truly in such deed or instrument any of the facts, matters, and things aforesaid.

19. Whereas by an Act passed in the 48 Geo. 3, c. 149, certain penalties and disabilities were imposed upon the parties to any deed or instrument of conveyance of property upon sale, wherein the full purchase or consideration-money directly or indirectly paid or secured or agreed to be paid should not be truly expressed and set forth, and also upon the attorney, solicitor, writer to the signet, or other person employed in or about the preparing of any such deed or instrument: and whereas the sale of a trade or business, or the goodwill thereof, has been erroneously considered by some persons not to be a sale of property within the meaning of the Acts imposing *ad valorem* stamp duties on the conveyance thereof, and the instruments whereby property of that description, or whereby certain messuages, lands, or other property wherein or whereupon such trade or business has been carried on, has or have been in such cases assigned, transferred, or otherwise conveyed to or become vested in a purchaser may not have been stamped with the full and proper duties with which the same were by law chargeable, and in some instances the purchase or consideration-money has been omitted to be fully and truly expressed and set forth as required by law in such instruments, by reason whereof the parties to such instruments, and the attorney, solicitor, writer to the signet, or other person employed in or about the preparing of the same, may have incurred the penalties, forfeitures, and disabilities in that behalf mentioned in and imposed by the said Act of the 48 Geo. 3, c. 149, and it is expedient that they should be relieved therefrom, and that such instruments should be rendered available in evidence: be it enacted, that in any such case as aforesaid the parties to any such instrument made and bearing date on or before the 15th day of June, 1854, and every person employed in or about the preparing of the same, shall be and they are hereby declared to be respectively freed, discharged, and indemnified from and against any penalties, for-

feitures, and disabilities, contained in or imposed by the said last-mentioned Act which may have been incurred by reason of any omission to express or set forth in any such instrument the full and true purchase or consideration-money upon the sale of the property thereby conveyed, transferred, assigned, or assured, or vested in the purchaser; and all such instruments shall be available in evidence notwithstanding the full and proper *ad valorem* duties which ought to have been paid in respect of the purchase or consideration-money therein expressed for the conveyance, transfer, or assignment of any such trade, business, or goodwill shall not have been paid and denoted thereon.

20. And whereas it is expedient to reduce the stamp duty now payable on licences to pawnbrokers in Dublin: be it enacted, that the stamp duty of 15*l.* now payable on a licence to be taken out yearly for exercising the trade or business of a pawnbroker within the city of Dublin, or the circular road surrounding the same, shall be reduced to the sum of 7*l.* 10*s.*

21. All indentures of apprenticeship, bonds, contracts, and agreements entered into in the United Kingdom for or relating to the service in any of her Majesty's colonies or possessions abroad of any person as an artificer, clerk, domestic servant, handicraftsman, mechanic, gardener, servant in husbandry, or labourer, shall be and the same are hereby exempted from all stamp duty.

22. And whereas by an Act passed in the 55 Geo. 3, c. 184, and by the said Act of the 13 & 14 Vict. respectively, certain stamp duties were imposed upon any schedule, inventory, or catalogue containing the matters and things in the said Acts respectively mentioned, which should be referred to in or by and be intended to be used or given in evidence as part of or as material to any instrument charged with stamp duty, but which should be separate and distinct therefrom, and not endorsed on or annexed thereto, and doubts are entertained whether the said duties extend to certain documents and writings of a public character hereinafter mentioned: for the removal of such doubts, be it declared and enacted, that the said last-mentioned stamp duties shall not extend or be deemed to have extended to any public map, plan, survey, apportionment, allotment, award, or other parochial or public document or writing whatsoever made under or in pursuance of any Act of Parliament, and deposited or kept for reference in any registry, or in any public office, or with the public books, papers, or writings of any parish, by reason of any such document or writing as aforesaid being referred to in or by any deed or instrument whatever, provided that such document or writing be not endorsed on or annexed to such deed or instrument.

23. And whereas by the said Act of the 13 & 14 Vict. and this Act respectively, certain *ad valorem* stamp duties are granted and imposed upon leases or tacks of any lands, tenements, hereditaments, or heritable subjects at a yearly

rent, and doubts are entertained, whether the said duties extend to any lease or tack for any term or period less than a year: for the removal of such doubts, be it enacted, that where any lease or tack of any lands, tenements, hereditaments, or heritable subjects shall be made for any term or period less than a year at a rent reserved or payable for the same, such lease or tack shall be chargeable with the same *ad valorem* duty as a lease or tack at a yearly rent of the same amount as the sum so reserved or payable.

24. And in order to encourage the purchase of stamps for drafts, bills, and notes of the several rates and denominations hereinafter mentioned, and to facilitate the distribution and supply thereof there shall be granted and allowed to every person who at one and the same time shall produce at the office of the Commissioners of Inland Revenue in London or Dublin, paper, to be stamped with such stamps or any of them to the amount of 5*l*. in the whole, or shall purchase such stamps or any of them to the like amount at the office of the said Commissioners in London, Edinburgh, or Dublin, or of any distributor or sub-distributor of stamps at any place not within the distance of 10 miles from the said offices respectively the allowance following; (that is to say), on stamps for denoting any rate of duty not exceeding 1*s*. on bills of exchange, drafts, or orders, or promissory notes, an allowance after the rate of seven and a half per centum on the amount of such stamp duties respectively; provided that no allowance shall be made on any fraction of a pound; which said allowances are in lieu of any allowance payable on stamps of the like rates and denominations under any other Act or Acts in force.

25. And in consideration that such allowance as aforesaid is by this Act granted on the purchase of stamps of the several rates and denominations aforesaid, it shall not be lawful for any person on the sale of any such stamp to make any charge for the paper whereon the same is impressed; and if any person upon the sale of any stamp denoting any rate of duty not exceeding 1*s*. for any bill of exchange, draft, or order, or promissory note, shall make any charge for the paper whereon the same is impressed, or under any colour or pretence whatever demand or receive a greater price or sum than the amount of the stamp duty, he shall forfeit the sum of 10*l*.

26. Where any person shall be possessed of any stamps rendered useless by this Act, it shall be lawful for the Commissioners of Inland Revenue, on application to them or to their proper officer in that behalf, at any time on or before the 5th day of April, 1855, to cancel and make allowance for the same as in the case of spoiled stamps, after deducting the discount granted and allowed by law on the purchase of stamps of the like description.

27. Every instrument liable to stamp duty shall be admitted in evidence in any criminal proceeding, although it may not have the stamp

required by law impressed thereon or affixed thereto.

#### THE SCHEDULE TO WHICH THIS ACT REFERS.

| Inland Bill of Exchange, Draft, or Order for the payment to the bearer, or to order, at any time otherwise than on demand, of any sum of money | Duty.        |
|------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| Not exceeding £5                                                                                                                               | 5-0 0 1      |
| Exceeding £5 and not exceeding 10                                                                                                              | 10-0 0 2     |
| — 25                                                                                                                                           | 25-0 0 3     |
| — 50                                                                                                                                           | 50-0 0 6     |
| — 75                                                                                                                                           | 75-0 0 9     |
| — 100                                                                                                                                          | 100-0 1 0    |
| — 200                                                                                                                                          | 200-0 2 0    |
| — 300                                                                                                                                          | 300-0 3 0    |
| — 400                                                                                                                                          | 400-0 4 0    |
| — 500                                                                                                                                          | 500-0 5 0    |
| — 750                                                                                                                                          | 750-0 7 6    |
| — 1,000                                                                                                                                        | 1,000-0 10 0 |
| — 1,500                                                                                                                                        | 1,500-0 15 0 |
| — 2,000                                                                                                                                        | 2,000-1 0 0  |
| — 3,000                                                                                                                                        | 3,000-1 10 0 |
| — 4,000 and upwards                                                                                                                            | 4,000-2 0 0  |
|                                                                                                                                                | 2 5 0        |

Foreign Bill of Exchange drawn in, but payable out of the United Kingdom,

If drawn singly or otherwise than in a set of three or more, the same duty as on an inland bill of the same amount and tenor.

If drawn in sets of three or more, for every bill of each set,

Where the sum payable thereby shall not exceed . . . 25-0 0 1

|                           |              |
|---------------------------|--------------|
| And where it shall exceed |              |
| £25 and not exceed 50     | 50-0 0 2     |
| — 50                      | 75-0 0 3     |
| — 75                      | 100-0 0 4    |
| — 100                     | 200-0 0 8    |
| — 200                     | 300-0 1 0    |
| — 300                     | 400-0 1 4    |
| — 400                     | 500-0 1 8    |
| — 500                     | 750-0 2 6    |
| — 750                     | 1,000-0 3 4  |
| — 1,000                   | 1,500-0 5 0  |
| — 1,500                   | 2,000-0 6 8  |
| — 2,000                   | 3,000-0 10 0 |
| — 3,000                   | 4,000-0 13 4 |
| — 4,000 and upwards       | 0 15 0       |

Foreign Bill of Exchange drawn out of the United Kingdom, and payable within the United Kingdom, the same duty as on an inland bill of the same amount and tenor.

Foreign Bill of Exchange drawn out of the United Kingdom, and payable out of the United Kingdom, but indorsed or negotiated within the United Kingdom, the same duty as on a foreign bill drawn within the United Kingdom, and payable out of the United Kingdom.

| Promissory Note for the payment in any other manner than to the bearer on demand of any sum of money          | Duty. |    |    | demand, of any sum of money. | Duty.                            |       |        |
|---------------------------------------------------------------------------------------------------------------|-------|----|----|------------------------------|----------------------------------|-------|--------|
|                                                                                                               | £     | s. | d. |                              | £                                | s.    | d.     |
| Not exceeding                                                                                                 | 5     | 0  | 0  | 1                            | Exceeding £100 and not exceeding | 200   | 0 2 0  |
| Exceeding £5 and not exceeding 10                                                                             | 10    | 0  | 0  | 2                            | 200                              | 300   | 0 3 0  |
| 10                                                                                                            | 25    | 0  | 0  | 3                            | 300                              | 400   | 0 4 0  |
| 25                                                                                                            | 50    | 0  | 0  | 6                            | 400                              | 500   | 0 5 0  |
| 50                                                                                                            | 75    | 0  | 0  | 9                            | 500                              | 750   | 0 7 6  |
| 75                                                                                                            | 100   | 0  | 1  | 0                            | 750                              | 1,000 | 0 10 0 |
| Promissory Note for the payment, either to the bearer on demand or in any other manner, than to the bearer on |       |    |    |                              | 1,000                            | 1,500 | 0 15 0 |
|                                                                                                               |       |    |    |                              | 1,500                            | 2,000 | 1 0 0  |
|                                                                                                               |       |    |    |                              | 2,000                            | 3,000 | 1 10 0 |
|                                                                                                               |       |    |    |                              | 3,000                            | 4,000 | 2 0 0  |
|                                                                                                               |       |    |    |                              | 4,000 and upwards                |       | 2 5 0  |

Lease or Tack of any lands, tenements, hereditaments, or heritable subjects, for any term of years exceeding 35, at a yearly rent, with or without any sum of money by way of fine, premium, or grassum paid for the same, the following duties in respect of such yearly rent,

| Duties.                                                                                          | 100 Years. and under. |    |    | Above 100 Years. |    |    |
|--------------------------------------------------------------------------------------------------|-----------------------|----|----|------------------|----|----|
|                                                                                                  | £                     | s. | d. | £                | s. | d. |
| Where the yearly rent shall not exceed £5                                                        | 9                     | 3  | 0  | 0                | 6  | 0  |
| And where the same shall exceed £5 and not exceed £10                                            | 0                     | 6  | 0  | 0                | 12 | 0  |
| 10                                                                                               | 0                     | 9  | 0  | 1                | 4  | 0  |
| 15                                                                                               | 0                     | 12 | 0  | 1                | 10 | 0  |
| 20                                                                                               | 0                     | 15 | 0  | 3                | 0  | 0  |
| 25                                                                                               | 1                     | 10 | 0  | 4                | 10 | 0  |
| 50                                                                                               | 2                     | 5  | 0  | 6                | 0  | 0  |
| 75                                                                                               | 3                     | 0  | 0  |                  |    |    |
| 100                                                                                              |                       |    |    |                  |    |    |
| And where the same shall exceed £100 then for every £50, and also for any fractional part of £50 | 1                     | 10 | 0  | 3                | 0  | 0  |

And where any such lease or tack as aforesaid shall be granted in consideration of a fine, premium, or grassum, and also of a yearly rent, such lease or tack shall be chargeable also, in respect of such fine, premium, or grassum, with the *ad valorem* stamp duties granted under the head or title of "Conveyance" in the schedule annexed to the Act passed in the 13 & 14 Vict. c. 97.

#### EXEMPTION.

Any lease made in pursuance of the Trinity College, Dublin, Leasing and Perpetuity Act, 1851.

Conveyance of any kind or description whatsoever in England or Ireland, and charter, disposition, or contract containing the first original constitution of feu and ground annual rights in Scotland (not being a lease or tack for years), in consideration of an annual sum payable in perpetuity or for any indefinite period, whether fee farm or other rent, feu duty, ground annual, or otherwise.—The same duties as on a lease or tack for a term exceeding 100 years, at a yearly rent equal to such annual sum.

#### EXEMPTIONS.

Any lease or tack for a life or lives not exceeding three, or for a term of years determinable with a life or lives not exceeding three, by whomsoever granted.

Any grant in fee simple or in perpetuity, made in Ireland, in pursuance of the Renewable Leasehold Conversion Act, or in pursuance of the Trinity College (Dublin) Leasing and Perpetuity Act, 1851.

All which said leases or tacks and grants respectively shall be chargeable with the stamp duties to which the same were subject

and liable before the passing of the Act 16 & 17 Vict. c. 63.

#### DUPLICATE OR COUNTERPART AND PROGRESSIVE DUTY.

Every such lease or tack, and every such conveyance, charter, disposition, or contract as aforesaid hereby charged with duty, and the duplicate or counterpart thereof respectively, shall be chargeable with the respective stamp duties granted and made payable under the several heads or titles of "Duplicate or Counterpart," and "Progressive Duty," in the schedule annexed to the Act of the 13 & 14 Vict. c. 97.

Licence to demise copyhold lands, tenements, or hereditaments, or the memorandum thereof if granted out of Court, and the copy of Court Roll of any such licence if granted in Court:

Where the clear yearly value of the estate to be demised shall be expressed in such licence and shall not exceed 75*l*.—The same duty as on a lease at a yearly rent equal to such yearly value, under the Act of the 13 & 14 Vict. c. 97.

And in all other cases,—10*s*.



## NOTICES OF NEW BOOKS.

*The Burgess's Manual : a Practical Exposition of the Constitution of Corporate Towns, as regulated by the various Municipal Corporation Acts, comprising the Provisions relating to the Municipal Elections, the Officers of the Corporation, the Town Council, the general government and improvement of, and the Administration of Justice in, Boroughs, and the grant of Charters of Incorporation to Non-corporate Towns.* By FREDERIC MERRIFIELD, Esq., of the Middle Temple, Barrister-at-Law. London, V. and R. Stevens and G. S. Norton. 1854. Pp. 200, xvii.

MR. MERRIFIELD'S Manual supplies a clear and accurate guide for the burgesses of municipal corporations, collected from numerous Acts of Parliament, relating to the constitution of such corporations, their officers and members, their powers and duties.

The 1st part of the work treats of the several members and officers of corporations, with the several provisions of the Statutes relating to their qualification, election, &c. The 2nd part relates to the government and internal economy of corporations, and the 3rd comprises the reserved rights of freemen, temporary and special provisions, and the grant of charters of incorporation.

The following Table of days fixed for the performance of various municipal duties in each year, will be useful to our readers.

“Feb. 1st.—Coroner's return of inquests for the year ending 31st December preceding, to be transmitted to Secretary of State.

Council to transmit a statement of the borough revenues and expenditure, made up to the last period of audit, to the Secretary of State, *before the 1st of March.*

Mar. 1st.—Appointment of mayor's auditor, and elections of elective auditors and assessors.

Borough accounts to be made up for the half year ending 1st March, and audited in the month of March.

Aug. 31st.—The period selected for the termination of the period of *occupation* required by the Act.

All rates (except what have become payable within the preceding six months) to be paid on or before this day.

Receipt of charitable allowance within 12 months before this date, a disqualification.

Sept. 1st.—Borough accounts to be made up for the half year ending 1st of March, and audited in the month of September.

Sept. 5th.—Overseers to deliver burgess lists

prepared by them to the town clerk, and to keep copies for inspection until 15th of September.

Sept. 8th.—Town clerk to fix copy of burgess lists on the door of the town hall—there to remain one week.

Sept. 15th.—Notices of claims and objections to be delivered on or before this day.

Sept. 23rd.—Lists of claims and objections to be fixed on the door of the town hall—there to remain until the 30th of September (inclusive).

Oct. 1st.—Court of revision to be held between this day and the 15th of October (both inclusive)—three days previous notice having been fixed on the door of the town hall.

Oct. 22nd.—Burgess roll to be completed by this day.

Nov. 1st.—The day on which the new burgess roll comes in force—Elections of councillors.

Nov. 9th.—Meeting of council at noon—Elections of mayor, sheriff (if any), and aldermen.”

## LAW OF ATTORNEYS AND SOLICITORS.

## ORDER OF COURSE TO CHANGE SOLICITOR, WHERE SPECIAL CIRCUMSTANCES.

It appeared that the plaintiff's solicitor had entered into a contract with *N.* to employ him as their town agent for a term of 15 years, but that being dissatisfied with his mode of conducting the present suit, they obtained an order of course to appoint another solicitor in his place as solicitor on the record.

On a motion by *N.* to discharge this order, the *Master of the Rolls* said,—“The questions are, first, whether, upon an application for an order to change a solicitor on the record, anything special can arise; and if so, secondly, whether there was any circumstance in this case which ought to have been communicated to the officer. It is alleged that, as such an order is absolute and unconditional, nothing special can arise upon it. I do not concur in that view of the case. There are many cases in which the circumstances might be such as to entitle a party to an order of course to change his solicitor. Suppose an executor were directed by his testator to continue to employ a particular solicitor in a suit, it could not be a matter of course to obtain an order to discharge him. The fact, at all events, ought to be mentioned specially.

I do not see why the observations of Lord Langdale in *De Feuchères v. Dawes*, 11

Beav. 46, should not be applicable to every case of an order of course, and why, if any material fact is suppressed or not mentioned, the party applying for the order of course should not, in all cases, be disentitled to retain it. The question is, whether such a state of things exists here? There may be a contract, which disentitles the solicitor to discharge his agent, but no contract between the solicitor and his agent can prevent the client from the exercise of his undoubted right to discharge his solicitor. This, however, is not that case. This application does not emanate from the client, but from the solicitor himself, between whom and his town agent a contract had been entered into, as to the effect of which I give no opinion, but which, if mentioned, the officer might have said 'a special application is necessary.' \* \* \*

"I am of opinion that the fact of the existence of a special contract between the solicitor and his town agent ought to have been stated to the officer, when the order to change the solicitor was applied for. In the absence of any expression of a desire, on the part of the client, to change the town agent, and without expressing any opinion as to his right to do so, or whether he would be bound by such an agreement as is stated to exist in this case, I must discharge the order as irregular, with costs." *Richards v. Scarborough Market Company*, 17 Beav. 83.

## LAW OF COSTS.

### WHERE APPELLANT SUCCESSFUL.

*Quere*, if there is any such rule as that a successful appellant shall in no case have his costs of the appeal from his opponent? *Martin v. Pycraft*, 2 De G. M'N. & G. 785.

### ON MARRIAGE OF WARD OF COURT WITHOUT LEAVE.

Upon the marriage of a ward of Court without leave, and the marriage being found valid, the party in contempt will not be discharged upon executing the settlement, unless on payment of the costs. *Field v. Brown*, 17 Beav. 146.

## POINTS IN EQUITY PRACTICE.

### REHEARING OF APPEAL BEFORE FULL COURT.

WHERE, after fully hearing an appeal, the Lords Justices differ and pronounce judgment,

it amounts to an affirmance, and Lord *Crawworth*, L. J., added, "We have never sanctioned a rehearing before the full Court of any case in which we have given judgment. One or two cases of difficulty, as *Stanton's case*, 1 De G. M'N. & G. 214, the case of *Mrs. Cumming*, ib. 537, and *Lake v. Currie*, 2 ib. 536, we have asked the Lord Chancellor to hear, but not after judgment was pronounced." *Blann v. Bell*, 2 De G. M'N. & G. 775.

### EFFECT OF DISMISSING BILL WHERE NEW CIRCUMSTANCES ARISE.

The dismissal of a bill in no respect prejudices plaintiffs, nor prevents them from filing any new bill for the same purpose, founded on any new or altered state of circumstances.

*Mayor, &c., of Liverpool v. Chorley Water-works Company*, 2 De G. M'N. & G. 852.

### PAYMENT OF MONEY INTO COURT IN ABSENCE OF INTERESTED PARTIES.

Held, that an order may be made for the payment of money into Court, although all the persons interested were not before it.

*Willon v. Hill*, 2 De G. M'N. & G. 807.

## INCORPORATED LAW SOCIETY.

### ANNUAL REPORT OF THE COUNCIL.

[Concluded from p. 309.]

June 27, 1854.

### IV. ADMINISTRATION OF OATHS IN LONDON.

The Council have for several years made various attempts to procure Commissions authorising attorneys and solicitors in London to administer oaths in the same manner as their brethren in the country are empowered to do. Last Session this object was effected in the Court of Chancery.

On the passing of the Act empowering the Lord Chancellor to issue Commissions, the Council solicited an interview with the Lord Chancellor as to the necessity of regulations to be made by his Lordship, and particularly with reference to the testimonials and qualifications of the parties applying to become Commissioners. His Lordship adopted most of the suggestions of the Council, and the regulations were issued and transmitted to the members.

Some important questions have been raised before the Lord Chancellor as to the power of the Commissioners to administer oaths at the residence of the deponent or other place not the place of business or usual residence of the Commissioner, and the Lord Chancellor has decided that the authority of the Commissioner is not limited to his usual place of bus-

siness. The Commission is granted to solicitors practising within 10 miles of Lincoln's Inn Hall; but it is undecided, and the question has not arisen, whether the oath may not be administered anywhere beyond that circuit. The safe course would be, within the clear intention of the Legislature, to confine the exercise of the power to the boundary expressed in the Statute. The Act fixes the fee of 1s. 6d. for the oath. In the country a further fee of 2s. 6d. is allowed on each exhibit; but the former fee on exhibits paid at the Affidavit Office having been abolished, it is understood that the Taxing Masters will not allow any fee in London for exhibits, as the affidavit can be sworn at the Record Office without any charge beyond the 1s. 6d. paid by means of stamp. At present, therefore, the Council recommend that no charge be made for marking exhibits, however numerous.<sup>1</sup>

The law and practice in the Court of Chancery as to administering oaths having been thus settled, the Council renewed their application to the Common Law Judges for the grant of similar powers. Their former application having been postponed for further consideration on account of the loss to the Treasury of the fees on swearing affidavits at the Judges' Chambers, the Council submitted that more than 12 months having elapsed since the Lords of the Treasury, with the assent of the Judges, had fixed a scale of fees in many respects higher than the previous fees, and created new fees though some fees had been abolished or reduced, the Council submitted that the new scale of fees had produced a larger sum than necessary to defray the expenses of the Court, and consequently the loss of fees on the administration of oaths would not be material, and it was hoped, indeed, that many other fees might also be reduced or abolished.

#### V. FEES IN THE COMMON LAW COURTS AND OFFICES.

The Council also addressed the Lords Commissioners of her Majesty's Treasury, stating that the alterations effected by the Common Law Procedure Act, 1852, were, as the Council respectfully submitted, intended to relieve the suitors from a large part of the expense previously incurred in the proceedings in the Common Law Court; but representing that although their Lordships were pleased to reduce the fees on trials at *Nisi Prius* and to abolish others, the fees in the various stages of an action before trial were in several respects increased, and new fees created. The Council, therefore, submitted that more than a year having elapsed since the new scale of fees was established, it would be found that the amount of such fees was greater than necessary for the expenditure. The Council also stated that, on a representation made to several of the Judges of the hardship suffered by

the suitors in regard to many of the fees in the early proceedings in an action, the Judges informed the Council, that, as soon as the amount could be ascertained, the Lords of the Treasury, in the event of a surplus, would revise the scale of fees. It was therefore earnestly trusted that their lordships would take the subject into consideration, and afford such relief as might seem meet.<sup>2</sup>

#### VI. USAGES OF THE PROFESSION.

In the course of the past year, numerous questions have been brought before the Council relating to the usual practice of solicitors in conveyancing business. Some of these depended on peculiar circumstances, not within the range of ordinary practice, and which the Council, at the request of the respective solicitors, decided, and thus in some instances they prevented unpleasant disputes and expensive applications to the Court.

#### VII. COMPLAINTS OF MALPRACTICE AND ENCROACHMENTS ON THE PROFESSION.

The Council regret to say that, during the past year, they have had to investigate numerous complaints against attorneys in practice;—objections to attorneys applying to be readmitted, or to renew their certificates;—and against unqualified persons assuming to act as attorneys, or using the names of attorneys without their authority. In one case a reference by the Court to the Master is still pending for charging in a bill and an affidavit of increase, larger payments to several witnesses than were actually made. In another case the attorney has been struck off the Roll, having been convicted of obtaining money under the false pretence of the institution of legal proceedings which had never taken place; and in a third case a rule *nisi* is still pending. The Council and their Committees have considered the affidavits and documents in several instances in support of alleged malpractice; but the evidence in which was deemed insufficient to support an application to the Court.

They have also instituted inquiries into many cases of alleged encroachment on the practice of solicitors by unqualified persons, who appear in County Court business and in conveyancing matters, and have taken such steps as appeared necessary.

In one of these cases in Staffordshire the magistrates committed the pretended attorney for trial on the charge of obtaining money under false pretences.

A complaint was made by the Middlesex magistrates against an attorney, who, without any authority, had, by his clerk, intruded his services into a prosecution, in order to obtain the costs of instructing counsel and appearing on the prosecution out of the county rates. In

<sup>1</sup> The Council intend, at the proper opportunity, to suggest that 1s. should be allowed on each exhibit.

<sup>2</sup> A return has recently been made to Parliament of the fees received by the Common Law officers, and it is trusted that some considerable relief to the suitors will now be afforded.

deference to the magistrates, the motion was made; but the Court declined granting a rule *nisi* to strike the attorney off the Roll, on the ground that, however objectionable might be the practice complained of, it was not of such a character as to merit the severe intervention of the Court. If any other case should occur in which additional circumstances of culpability or fraud in obtaining actual payment from the county treasurer, the Council may feel justified in repeating the application.

A considerable number of complaints against practitioners have originated with parties who have been defeated in their proceedings by the attorneys for the opposite side, or, who having been unsuccessful in their claims, censure their own attorneys for the result.

The Council have submitted to the Commissioners of Inland Revenue several statements showing that uncertificated attorneys have practised in numerous cases before the County Court, and the Solicitor to the Board has in some of the cases been authorised to prosecute the offenders for penalties.

On a writ issued in the Court of Exchequer by the plaintiff in person, it appeared that an agent, formerly an attorney's clerk, obtained *25s.* for issuing and serving a writ, and it was alleged that he was in the habit of attending at the Police Courts and transacting business connected with the cases before the Court; but the Council were unable to obtain satisfactory evidence to enable them to proceed further.

The Council having been informed that unqualified persons, neither solicitors in England or Ireland, nor writers to the signet in Scotland or solicitors in the Courts there, have been practising in the judicial business of the House of Lords, they submitted that appeals from, and proceedings relating to, the decisions of her Majesty's Courts of Law and Equity of the United Kingdom or the Colonial Courts, should be conducted by duly qualified practitioners of the Superior Courts, and the Council suggested that the remedy for the grievance might be effected by the officers of the House of Lords declining to receive from unqualified persons any papers relating to such appeals.

The Council have received information that a London attorney had issued a new and reduced scale of agency charges, and solicited attorneys in the country to employ him. It does not appear that any effectual steps can be taken to prevent this dishonourable practice; and the person complained of not being a member of the Society, it is not in the power of the Council to interfere.

#### VIII. RENEWAL OF THE CERTIFICATES OF ATTORNEYS.

Mr. William Henry Barber has presented a petition to the Master of the Rolls for the renewal of his certificate to enable him to practise in Equity. No notice was taken in that petition that the case had been twice heard before the Court of Queen's Bench, and that the Court had pronounced judgment upon it.

The Council considered it to be their duty that this material information should be given to the Court, and they therefore instructed counsel to appear on the petition, and to submit that the case having been twice fully heard before the Court of Queen's Bench, and decided against Mr. Barber, the application, if there were any new or sufficient grounds, should be again made to *that* Court; and that the same course should be pursued as on the last occasion, when Mr. Roebuck moved for a rule calling on this Society to show cause why Mr. Barber's certificate should not be renewed. The Court of Queen's Bench, who are already familiar with the case upon the former testimony, can then determine whether the further evidence, stated in the petition to the Master of the Rolls, is sufficient to entitle Mr. Barber to a rehearing.

In numerous other cases they have opposed the re-admission or renewal of certificates, and have successfully resisted several applications in which the party sought to renew the certificate without giving the usual public notice; a practice somewhat increasing, and liable to abuse. In one instance the alleged malpractice was for some time under the consideration of the Judge, and the renewal of the certificate has been refused.

#### IX. GENERAL AND LEGAL EDUCATION AND EXAMINATION.

The proposed extension of the examination of articulated clerks to subjects of science and literature has been often considered by the Council, and after several meetings and much discussion, they have come to the conclusion, that it is expedient, previously to the admission of candidates on the Roll of Attorneys and Solicitors, that some examination should take place on points of *general* education, in addition to that now required upon *legal* attainments; and they think that such general education should comprise a competent knowledge of English History, Geography, Arithmetic, Bookkeeping, and the Latin and French Languages.

The Council have under their consideration several suggestions for carrying this desirable object into effect: they are of opinion the alteration ought not to extend to articulated clerks now serving under their respective contracts, but be applicable only to persons who may propose to be articulated after the change has been sanctioned by the Judges, and, if necessary, by the Legislature. The regulations for the efficient operation of the suggested improvement will obviously require much care and consideration.

The Council, in aid of the Examiners, have inquired into several objections raised against the admission of candidates, on the alleged ground of misconduct during their clerkship, or irregular or illegal modes of service; and in some of these instances both the attorneys and their articulated clerks have been personally examined.

In one of the cases last year a candidate ap

pealed against the decision of the Examiners; but after two hearings before the three Judges, the appeal was dismissed, and the decision of the Examiners confirmed.

During the last four Terms 391 candidates have been examined, of whom 347 were passed, and 44 postponed.

#### X. NEW COURTS OF LAW.

In the last Session of Parliament a petition was presented to the House of Commons on behalf of this Society, praying that the House would take into its early consideration the defective and insufficient state of the Court rooms of the Superior Courts of Law and Equity adjoining Westminster Hall, with a view to the adoption of such measures as might seem meet for the erection of new buildings for the accommodation of the Judges, the Bar, the Suitors and their Solicitors, and generally for the more convenient administration of Justice.

It was proposed that the new building should be placed on the borders of the cities of London and Westminster, between Lincoln's Inn and the Temple, having the Strand and Fleet Street, with the Temple, on the South, Carey Street and Lincoln's Inn on the North, Chancery Lane on the East, and Clement's Inn and New Inn on the West; and being thus in the centre of the metropolis, it would occupy a position greatly to the advantage and convenience of the public in general, as well as the Profession.

The proposal further includes the concentration of all the Law and Equity Offices now scattered in various parts of Chancery Lane, Lincoln's Inn, Staple Inn, and other places; and to reconstruct them under the same roof, and in immediate connection with the several Courts to which they respectively belong.

A deputation from the Council attended the Prime Minister and the Chief Commissioner of Public Works, who acknowledged the necessity of increased accommodation for the transaction of Legal business, and expressed themselves favourably disposed towards the proposed plan. The means of defraying the expense have been submitted to the Chancellor of the Exchequer, and it is anticipated that there is a sufficient amount of surplus dividends and interest accumulated in the Court of Chancery to provide for the purchase of the site, and the construction of the proposed edifice. This fund, which is far beyond any possible claim of the suitors, may fairly and properly be applied to the carrying out of the plan. It is true that the fund is charged, in case of any deficiency in the fees, with the payment of the pensions and compensations to the holders of abolished offices; but these incumbrances are gradually decreasing in amount, and the chance of a deficiency is in the highest degree improbable.

#### XI. NEW RULES AND ORDERS.

As usual, the Council have been careful that the several Rules and Orders of the Superior Courts which have been issued from time to

time should be printed and circulated for the information and use of the members. During the last 12 months the following Rules and Orders have been accordingly printed and sent to the members of the Society:—<sup>3</sup>

In *Chancery* these Orders relate, 1st, to the Setting Down of Causes, Proceedings before the Equity Judges at Chambers, and the Taxation of Conveyancing Costs; the Payment of Legacy Duty on Funds in Court; the Recitals in drawing up Decrees or Orders; the Assents of Parties relating to South Sea and Bank Annuities; the Investment of Dividends and Accumulations; Motions for Decrees at the Rolls; Times of Attendance at the Accountant-General's Office; Proceedings at Chambers before the Vacation Judge; Appeals before the Lords Justices; Commissions to Administer Oaths in Chancery; Legacy and Succession Duty; Practice at the Judges' Chambers; Office Copies; Production of Documents; and the Taxation of Costs.

2nd. Proceedings in Lunacy.

3rd. The Specifications for Patents, and the Extension of Time for such Specifications.

4th. Charitable Trusts, and Proceedings in Chancery and the County Courts.

5th. In *Common Law*, the Rules issued relate to the Pleadings in Actions; the Fees at the Assizes; Setting Down Causes; Changing the Venue; Receiving Money out of Court; County Court Appeals; and County Courts' Registry of Judgments.

6th. Privy Council Appeals.

#### XII. GENERAL AFFAIRS OF THE SOCIETY.

*Number of Members.*—From the grant of the 1st Charter in 1831 to the year 1847, the average annual increase of members was 42, the total number in the latter year being 1371. Since that time down to the month of June, 1853, a decrease took place, on the average, of rather more than 10 members annually, the number at the Annual General Meeting on the 21st June, 1853, being 1301.

The reduction of the admission fee, which took place at the last Annual General Meeting, from 15*l.* to 5*l.*, has been productive of great advantage in regard to the number of Members. In the previous year, 1852, from the time of the Annual Meeting, on June 15th, to June 21st, 1853, only 29 town members joined the Society, and 5 country members; whilst in the like period, since the alteration of the admission fee, the number of new members has been 200 town and 37 country members.

The financial result is as follows:—

From June, 1852, to June, 1853,—Admission Fees, 485*l.* Annual Subscriptions, 63*l.*

From June, 1853, to June, 1854,—Admission Fees, 1,185*l.* Annual Subscriptions, 437*l.*, being an increase, during 12 months, in the admission fees of 700*l.*, and in annual subscriptions 374*l.*

<sup>3</sup> If any member, by mistake, or change of residence, has not received a copy, it will be supplied on application to the Secretary.

The Society have to regret the death of 24 members during the past year, and the retirements of 33, and 24 members were excluded last year for nonpayment of Subscriptions, making together 81. The new members elected and qualified are, as before stated, 237, making the present number of members, 1457, being the greatest number that has ever existed; and several additional members have been proposed, who have not yet been elected.

*Vacancies in the Council.*—The members will have observed by the circular convening this meeting, that there are three vacancies in the Council, which have occurred during the past year. They have particularly to regret that one of those vacancies has been occasioned by the decease of Mr. *Warren*, who was elected a member of the Council in the year 1852.

The Council have also to regret the retirement of Mr. *Amory* and Mr. *Harrison*. Both of these gentlemen were elected members of the Committee of Management under the Deed of Settlement in the year 1827, and re-elected under the two Charters of Incorporation. Mr. *Amory* had been invited to the office of President of the Society, but his state of health did not enable him to undertake its onerous duties. Mr. *Harrison* was elected President for the year 1850-51. The Society has been long indebted to both these gentlemen for the advantages derived from their great experience and sound judgment.

The Library now consists of 11,468 volumes, comprising an increase of 330 during the year.

The members continue to avail themselves of this extensive collection, and nearly 200 articulated clerks of members, as annual subscribers, have also resorted thereto.

The *Lecturers* of the past year were Mr. John Wilson on Conveyancing, Mr. Archer Shee on Equity and Bankruptcy, and Mr. Garth on Common Law and Criminal Law. The latter gentleman has completed his course of two years, and the vacancy will be supplied in the course of the ensuing month. Besides the members of the Society, the number of articulated clerks and other subscribers, who attended the several courses of lectures was 206.

The *State of the Funds* of the Society will appear in the Auditors' Report, copies of which have been laid in the Secretary's Office, according to the Bye Law, for the inspection of the members.

The Council would still exhort the members to continue their exertions in promoting the extension and welfare of the Society, both in town and country. At a period when the changes in the law accomplished or projected are so numerous and important, the interests of the Profession, and of the Public, seem more than ever to require that a Society actively engaged in watching and examining the measures which are to work alterations in the constitution of the country and the general administration of the Law, should receive the most strenuous support. The numerous advantages of the Society are now placed within

the reach of all the members of the Profession, who, by enrolling their names, are enabled to qualify their articulated clerks for admission to the library and lectures, and supply them with improved means of acquiring legal knowledge in accordance with the Charter of the Institution.

(Signed)

G. H. KINDERLEY, *President*.

#### PROCEEDINGS AND RESOLUTIONS AT THE ANNUAL GENERAL MEETING.

1. Read the circular convening the meeting, and the minutes of the last Annual General Meeting.

2. Read the Annual Report of the Council.

RESOLVED, that the Report of the Council be received and entered on the minutes; and the Report, or such parts of it as the Council shall think fit, be printed for the use of members.

3. Read the Auditors' Report of the Accounts of the Society.

RESOLVED,—That the Auditors' Report be approved and signed by the President.

4. The President having stated the vacancies in the Council and Auditors,

RESOLVED,—That Benjamin Austen, Keith Barnes, John Coverdale, James Leman, William Henry Palmer, Edward Rowland Pickering, John James Joseph Sudlow, William Williams, and John Young, be and they are hereby deemed and declared to be elected members of the Council, in lieu of those who go out of office by rotation.

That William Stephens be and is hereby deemed and declared to be elected a member of the Council in lieu of Augustus Warren, deceased.

That Bartle John Laurie Frere be and he is hereby deemed and declared to be elected a member of the Council in lieu of Richard Harrison, resigned.

That Alfred Bell be and he is hereby deemed and declared to be elected a member of the Council in lieu of Samuel Amory, resigned.

That John James Joseph Sudlow be and he is hereby deemed and declared to be elected President of the Society.

That Keith Barnes be and is hereby deemed and declared to be elected Vice-President of the Society.

That Edwin Ward Scadding, John Marmaduke Teesdale, and Richard Minshull Jones, be and they are hereby deemed and declared to be elected Auditors of the Accounts of the Society.

5. It was proposed by the Council, moved, seconded, and

RESOLVED,—That the 65th Bye Law, relating to the exclusion of members for misconduct be repealed, and that the following Bye Law be substituted in lieu thereof:—

“If any member shall, in the opinion of the Council, be guilty of any act which renders him unfit to remain a member of the Society; or if a requisition in writing, signed by three or more members of the Society, not being

members of the Council, shall be presented to the Council, stating ground of complaint against a member of the Society, a copy of the resolution of the Council on the subject, or a copy of the requisition, as the case may be, shall be sent to such member; and at least 10 days' notice shall at the same time be given to him of a meeting of the Council fixed for the consideration of the subject, at which meeting such member shall be heard, if he think proper, thereon. And, in case the Council shall thereupon be of opinion that such member ought to be excluded from the Society, they shall report their opinion thereon to a General or Special General Meeting of the Society; and they shall, in the notice convening such meeting, state the fact of a resolution of the Council having been come to on the subject, or a requisition presented, as the case may be; and such member shall be liable by the order and resolution of such meeting of the Society to be excluded from the Society, and immediately thereupon he shall cease to be a member thereof. But no order shall be made at any such Meeting of the Society for the exclusion of any member of the Society unless 50 members at least shall be present at the time appointed for the chair to be taken at such meeting, or within half an hour afterwards."

6. It was moved by Mr. Lyon, seconded by Mr. J. B. Kelly, and

**RESOLVED**,—That the cordial thanks of the meeting be presented to the President in particular, and to the Council in general, for their able and successful exertions in opposing the South Sea Company and the Executor and Trustee Bills.

7. It was moved by Mr. Sudlow, seconded by Mr. Nicol, and

**RESOLVED**,—That the cordial thanks of the Society be presented to Mr. Kinderley, the President, for his able conduct in the chair, and for the great attention, zeal, and ability he has bestowed during his year of office, as well in behalf of the best interests of the Society as of the Profession in general.

(Signed) G. H. KINDERLEY, *President*.  
1st August, 1854.

#### **LONDON COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.**

Alfred Bell, 59, Lincoln's Inn Fields.

Thomas Neale Douglty, 15, Middle Queen's Buildings, Brompton.

George Thomas Ellison, 1, Lincoln's Inn Fields.

Bartle John Laurie Frere, 6, New Square, Lincoln's Inn.

Randall Glynes, 8, Crescent, America Square.

William Leman, 51, Lincoln's Inn Fields.

#### **PROFESSIONAL LISTS.**

##### **PERPETUAL COMMISSIONER.**

*Appointed under the Fines and Recoveries' Act, with date when gazetted.*

Bayly, Charles, Torquay, in and for the county of Devon. Aug. 15.

#### **COUNTRY COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.**

*Appointed under the 16 & 17 Vict. c. 78, with dates when gazetted.*

Barrett, Charles Prentice, Eton. Aug. 11.

Bluet, John Courtney, Douglas, Isle of Man.

Heineman, George, York. Aug. 15.

Hobbs, James George, Bristol. Aug. 8.

Sheppard, George, Otley. Aug. 15.

Stephen, John Clowes, Douglas, Isle of Man.

Sweet, Henry, Taunton. Aug. 1.

#### **DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.**

*From 25th July to 18th August, 1854, both inclusive, with dates when gazetted.*

Curry, Philip Finch, and Henry Heathcote Statham, 41, Lord Street, Liverpool, attorneys and solicitors. Aug. 4.

Hartcup, William and Edward Hobart Barlee, Bungay, attorneys and solicitors. Aug. 18.

#### **NOTES OF THE WEEK.**

##### **STATUTE LAWS' COMMISSION.**

THE Queen has been pleased to direct Letters Patent to be passed under the Great Seal for appointing the Right Hon. Robert Monsey, Lord Cranworth, Lord High Chancellor; the Right Hon. John Singleton, Lord Lyndhurst; the Right Hon. Henry, Lord Brougham and Vaux; the Right Hon. John, Lord Wrottesley; the Right Hon. John Lord Campbell, Chief Justice of the Court of Queen's Bench; the Right Hon. Sir John Jervis, Knight, Chief Justice of the Court of Common Pleas; the Right Hon. Sir Frederick Jonathan Pollock, Knight, Chief Baron of the Court of Exchequer; the Right Hon. Sir James Park, Knight, one of the Barons of the Court of Exchequer; James Moncrieff, Esq., her Majesty's Advocate for Scotland; the Right Hon. Spencer Horatio Walpole; the Right Hon. Joseph Napier; Sir William Page Wood, Knight, a Vice-Chancellor; Sir Alexander James Edmund Cockburn, Knight, her Majesty's Attorney-General; Sir Richard Bethell, Knight, her Majesty's Solicitor-General; the Right Hon. Abraham Brewster, her Majesty's Attorney-General for Ireland; William Keogh, Esq., her Majesty's Solicitor-General for Ireland; Robert Handyside, Esq., her Majesty's Solicitor-General for Scotland; and Henry Bellenden Ker, Esq., Barrister-at-Law, to be her Majesty's Commissioners for the purpose of consolidating the Statute Laws of the Realm.—From the *London Gazette* of 18th August.

##### **NEW MEMBERS OF PARLIAMENT.**

The Hon. Arthur Gordon, for Beverley, in the room of the Hon. Francis Charles Lawley, who has accepted the office of Steward of her Majesty's manor of Northstead.

John Steel, Esq., for Cockermouth, in the room of Henry Aglionby Aglionby, Esq., deceased.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

**Court of Chancery.**

*In re McKenna, ex parte Hunt.* Aug. 5, 1854.

**BANKRUPTCY.—ALLOWANCE TO ACCOUNTANTS FOR SALE OF STOCK IN TRADE BY TENDER.**

*Upon a sale by tender in the country by accountants, of the stock in trade and premises of a bankrupt, held, on appeal from Mr. Commissioner Skirrow, that the scale in London of an intermediate allowance between that on a sale by auction and by valuation, is proper.*

THIS was a petition by way of appeal from the decision of Mr. Commissioner Skirrow, taxing the bill of Messrs. Hunt, accountants, for selling by tender the stock in trade and premises of this bankrupt. The Lords Justices had declined to interfere, on the ground that they had no jurisdiction, under the 12 & 13 Vict. c. 106, s. 12, but with liberty to apply to the Lord Chancellor (reported *ante*, p. 249).

*Karslake* in support; *Little* for the assignees.

The Lord Chancellor said, that the scale of allowance on a sale by tender in London, which was intermediate between a sale by auction and by valuation, was proper, and directed the charges to be settled accordingly.

**Lords Justices.**

*Mayor, &c., of Faversham v. Ryder.* June 26, 1854.

**REQUEST TO CORPORATION FOR BENEFIT AND ORNAMENT OF TOWN.—STATUTE OF MORTMAIN.**

*A testator gave a sum of money after the determination of certain life estates to the corporation of a town, to be applied in such manner and for such purposes as they should judge to be most for the benefit and ornament of the town: Held, dismissing with costs an appeal from the Master of the Rolls, that the gift was not void under the Statute of Mortmain (9 Geo. 2, c. 36), as contemplating the necessary purchase of land.*

THIS was an appeal from the decision of the Master of the Rolls (reported *ante*, vol. 47, p. 404). The testator, by his will, directed that the interest on a sum of 1,000*l.* four per cent. Bank Annuities, should be paid to his three daughters for their lives, and after the death of the survivor of them, to be transferred to the plaintiffs, and be applied in such manner and for such purposes as they shall judge to be most "for the benefit and ornament of the said town." The Master of the Rolls held, that the gift was not void under the Statute of Mortmain (9 Geo. 2, c. 36), and directed a reference at Chambers to settle a scheme, with the assistance of the Attorney-General, whereupon this appeal was presented.

*R. Palmer* and *W. Hislop Clarke* for the

plaintiffs; *Lloyd* and *Groce* for the defendant, the executor of the surviving trustee.

The Lords Justices said, it would be the duty of the plaintiffs, as trustees, to apply the fund in the mode allowed by law, and it could not be said that the town could not be benefited or ornamented except by the purchase of land, and the appeal must be dismissed with costs.

**Master of the Rolls.**

*Worth v. Cubitt.* July 14, 1854.

**WILL.—CONSTRUCTION.—GIFT TO DAUGHTERS AS TO CLASS.**

*A testator directed his executors to pay the profits of a farm, which they were to carry on until his youngest daughter should attain 21, for the joint benefit and maintenance of his wife, and of his natural daughter, and of his other daughters, when the same was to be sold, and the proceeds equally divided between his said wife and all his daughters share and share alike, and that his wife's share should on her death be also divided between his daughters as tenants in common: Held, that the natural daughter was entitled to an equal share with the other daughters.*

THE testator in this special case, under the 13 & 14 Vict. c. 35, after directing the executors of his will to pay the profits of his farm, which they were to carry on until his youngest daughter should attain 21, for the joint benefit and maintenance of his wife and of his natural daughter, and of his other daughters, directed that the farm should then be sold, and the proceeds equally divided between his said wife and all his daughters, share and share alike, and that his wife's share should on her death be also divided between his daughters as tenants in common. The question now arose, whether the illegitimate daughter was entitled to share equally with the other two daughters upon a sale.

*Palmer* and *Baggallay* for the two legitimate daughters.

The Master of the Rolls (without calling on *Roupell* and *Dickinson*, for the other daughter) said, that she was clearly entitled under the will to an equal share with the two other daughters.

*Saward v. Macdonnell.* Aug. 4, 1854.

**MASTERS IN CHANCERY ABOLITION ACT.—ASSISTANCE OF ACCOUNTANT IN TAKING ACCOUNTS.**

*A petition was refused with costs to transfer the taking of the accounts in a suit from the Master, to whom a reference had been made to the chief clerk at Chambers, in order that the assistance of an accountant might be obtained under the 15 & 16 Vict. c. 80, s. 42, notwithstanding the Master certified that the accounts were complicated, and that such assistance was required.*

THIS was a petition to transfer the taking of



the accounts in this suit from the Master, to whom a reference had been made, to the chief clerk at Chambers, in order that the assistance of an accountant might be obtained under the 15 & 16 Vict. c. 80, s. 42, which enacts that "it shall be lawful for the said Court, or any Judge thereof, in such way as they may think fit, to obtain the assistance of accountants," &c., "the better to enable such Court or Judge to determine any matter or issue in any cause or proceeding, and to act upon the certificate of such persons."

Torriano, in support, stated that the Master had certified that such assistance was required as the accounts were complicated.

The Master of the Rolls said, that the order could not be made, and the petition was accordingly dismissed with costs.

#### Vice-Chancellor Kindersley.

*Deeks v. Stanhope.* July 24, 1854.

PRACTICE. — WHERE DEFENDANT DIES AFTER ANSWER. — REVIVOR. — REPLICATION.

Held, that the filing of a replication is irregular to the answer of a defendant who had died since answer, where the suit had not been revived against the representatives; but with leave, under the circumstances to the plaintiff to amend by striking out such defendant's name in the replication, and to bring his representatives before the Court.

Glasse and Southgate appeared in support of this motion to take off the file the replication to the answer of a defendant who had since died, and of which fact the plaintiff's solicitor was aware.

Baily and W. W. Cooper for the plaintiff, contra.

The Vice-Chancellor said, that as the suit was not revived against the representatives, the replication was irregular, but as there was an irregularity in the notice of motion, there would be no costs on either side, and the plaintiff might amend by striking the name out of the replication, and bring his representatives before the Court.

*Cator v. Mason.* July 29, 1854.

WARD OF COURT. — MARRIAGE WITHOUT CONSENT. — DIRECTION AS TO DIVIDENDS DUE.

Held, that an application cannot be entertained for the direction of the Court in reference to dividends to which a ward of Court, who had married without consent, was entitled to her separate use, until the settlement has been executed by the husband.

This was an application for the direction of the Court in reference to certain dividends to which a ward of Court was entitled to her separate use, where she had married without the consent of the Court, and the husband had not yet executed the settlement, although approved by the chief clerk.

R. S. Tripp in support.

The Vice-Chancellor said, that the application could not be entertained until the settlement had been executed.

#### Vice-Chancellor Stuart.

*Goodall v. Gauthorne.* August 3, 1854.

TENANCY IN FEE. — POSTHUMOUS HEIR. — INTERMEDIATE RENTS.

*Upon the death of the tenant in fee of certain real estates, his sisters became his co-heiresses-at-law, but with defeasable rights. A posthumous son was afterwards born: Held, that as the sisters had not entered and received the rents due between the father's death and the birth of the son, they were not entitled to recover the same after their seisin was gone, and that the heir was therefore entitled.*

It appeared that on the death of the tenant in fee of certain real estates, his sisters became his co-heiresses-at-law, but with defeasable rights, and that a posthumous son was afterwards born. The sisters presented this petition claiming the rents which had accrued due before his birth.

Wigram and Webster in support; Amphlett, contra; Goodeve and Selwyn for other parties.

The Vice-Chancellor said, that as the petitioners had not entered and received the rents, they were not entitled to recover them after their seisin was gone, and the heir was therefore entitled.

#### Vice-Chancellor Wood.

*In re Harris' Trust.* August 4, 1854.

WILL. — CONSTRUCTION. — "ELDEST CHILD."

*A testator gave the interest on certain South Sea Stock to his wife for life and, on her death to his sister, Jane H., for life, but if she should not be alive at the death of his wife (and which was the case) he directed the same should be equally divided between the eldest children of his sisters Henrietta and Anne: Held, that the eldest children at his death, and not at the date of the will, were entitled.*

THE testator, by his will, gave the interest on certain South Sea Stock to his wife for her life, and on her death to his sister, Jane Harris, for life, but if she should not be alive at the death of his wife (and which was the case) he directed it should be equally divided between the eldest child of his sister, Henrietta Gaselee, and the eldest child of his sister, Anne Church. This petition was presented by the eldest daughter of Mrs. Gaselee at the testator's death, claiming the moiety.

Rolt and R. W. E. Forster in support; Daniel, Freeling, G. M. Giffard, and Edmund James for the next of kin, who claimed upon the death of the eldest daughter at the date of the will.

The Vice-Chancellor said, that as the eldest child was not mentioned by name, the testator could not have intended to refer to a *persona designata*, and the eldest child at his death was entitled.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

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SATURDAY, SEPTEMBER 2, 1854.
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### REMUNERATION OF SOLICITORS.

#### AD VALOREM CHARGES.—AUCTION EXPENSES.

THE Long Vacation has commenced, and we would strenuously urge upon the members of the Profession the advantage of availing themselves of the leisure which it affords to consider the subject of their remuneration, which we have from time to time brought under their notice. The subject must force itself on the notice of the public sooner or later, and it is well to be prepared when the time arrives.

Let the effect of the great and numerous reforms which have been made in the Law during the last 30 years be well considered in connexion with the practical spirit of the present day, so averse to useless forms. Especially let us bear in mind the remarkable competition to which the land is exposed by railways and other public companies, and that the cheapness and simplicity of their statutory modes of transfer render debentures and shares a more favourite investment for capital, in spite of the frequent smallness of the dividends paid, and the misery and ruin which an over-speculation in these securities have brought about. Consider, also, the Encumbered Estates Act for Ireland, and another just passed for the West Indies, and the simple mode of transfer adopted under them, as compared with our own. Again, the numerous schemes which are afloat for simplifying the transfer of real property,—all tend to show that great and important changes are pending in the system of conveyancing, and which, if unaccompanied by other changes and an alteration in the present mode of remuneration, may operate most unfairly and injuriously on the just interests of the Profession.

Two of the evils most complained of at the present time are, the difficulty and delay which exist in the disposal of real property as compared with shares, debentures, and other securities of a similar nature; and the costly machinery, as compared with a sale at the Stock Exchange, of a sale by Auction, which, we believe, operates to deter persons of limited means from investing their money in house property. It seems, indeed, well worthy of the consideration of the Profession, whether they should not establish an exchange of their own for effecting a sale of estates and procuring investments of money, so as to lessen the expenses of public auctions.

We do not, of course, mean that solicitors should become auctioneers, but we believe it would be a great advantage if readier means than now exist were afforded of disposing of what are called "good investments,"—such as freehold and leasehold houses, where the value is a mere matter of calculation, and which might, we think, be very satisfactorily disposed of through the medium of solicitors, if a public room or office were established for the purpose. Of course, anything of a speculative character, such as building land, or investments of that kind, it would be advisable to submit to general competition. If some plan of this kind were adopted, and found to answer, it might also be made available for effecting loans on mortgage.

But to return to the subject before us:—The points to which it seems to us the solicitors ought to direct their attention in altering the present mode of charging for their professional services, should be to establish a system of payment by a *fixed fee*;—having reference to the value of the property, the urgency and importance of business, and the skill required in its con-

duct,—instead of charging item by item as is now the practice. Nothing tends so much to prejudice the Profession with the Public as the feeling that they have an interest in multiplying items, and that delay is profitable, and if it merely did away with this feeling, one great good would at all events be gained by the alteration.

Undoubtedly, in heavy cases, and especially in small purchases, owing to the difficulty of the title, a per-centage charge, however high, would not afford an adequate remuneration, but the great mass of titles at the present day have been dealt with and are comparatively simple, and a scale of anything like the one proposed by us would afford a better remuneration to the solicitor on the generality of titles than he now receives under the present system, and where such would not be the case, it must be made the subject of a special arrangement.

We are inclined to think that the per-centage charge ought not to include any preliminary expenses, nor of course any costs of perfecting the title, but merely such costs as are now paid by railway companies on sales to them.

It may also be found advisable to divide the charge, and fix a separate fee for the abstract, and a separate fee for perusal of deeds and general trouble in reference to the purchases, and probably a distinction should be made between freehold and leasehold titles, and many other improvements will probably suggest themselves to some of our readers, but what we wish to establish is the principle, that the *amount* of the property is a sounder and more practical test of the value of a solicitor's services than the mere *length* of documents, and if the Profession can succeed in establishing this point, we believe it will tend more than anything else, not only to their advantage but to the satisfaction of their clients.

Some further communications on this subject shall receive early attention.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts of the present Session printed in the present Volume, with an Analysis to each, will be found at the following pages:—

Income Tax, cc. 17, 24, pp. 46, 134, *ante*.  
Commons' Inclosure, c. 9, p. 64.  
County Court Extension, c. 16, 121.  
Registration of Bills of Sale, c. 36, p. 216.  
Warwick Assizes, c. 35, p. 218.  
Attendance of Witnesses, c. 34, p. 235.

Evidence in Ecclesiastical Courts, c. 47, p. 254.

Commons' Inclosure (No. 2), c. 48, p. 254.

Cruelty to Animals, c. 60, p. 275.

Ecclesiastical Jurisdiction, c. 65, p. 276.

Highway Rates, c. 52, p. 276.

Turnpike Trusts' Arrangements, c. 51, p. 276.

Admiralty Court, c. 78, p. 295.

Borough Rates, c. 71, p. 298.

Acknowledgment of Deeds by Married Women, c. 75, p. 299.

Stamp Duties, c. 83, p. 317.

## COURT OF CHANCERY.

17 & 18 VICT. c. 100.

Master may inquire respecting abatement, &c.; s. 1.

Master may certify as to the abatement, &c.; s. 2.

Order of revivor, &c., shall be drawn up on Master's certificate; s. 3.

Upon Master's certificate of abatement, &c., Court may order prosecution or disposal of suit; s. 4.

Proceedings may be carried on by solicitor to Suitors' Fund; s. 5.

Master may obtain assistance of accountant; s. 6.

Master may certify specially to obtain opinion of Court; s. 7.

Additional temporary clerks in Master's offices; s. 8.

Salaries how to be paid; s. 9.

"The Lord Chancellor;" s. 10.

The following are the Title and Sections of the Act:—

An Act to make further provision for the more speedy and efficient Despatch of Business in the High Court of Chancery.

[10th August, 1854.]

WHEREAS the enlargement in manner hereinafter mentioned of the powers of the Masters in Ordinary of the High Court of Chancery during their continuance in office, and the appointment of additional temporary clerks in their offices, would enable them to wind up the more expeditiously the causes, matters, and things from time to time depending before them: And whereas better provision is required for the examining and settling of the accounts of receivers and others in the said Court: Be it therefore enacted, as follows:

1. Upon a suit in which any proceeding may from time to time be depending before a Master in Ordinary of the High Court of Chancery becoming abated by death, marriage, or otherwise, or becoming defective by reason of some change or transmission of interest or liability, it shall be lawful for the Master, notwithstanding that the suit has become abated or defective, to summon as he shall deem fit all or any of the parties to the suit or proceeding, or their or any of their solicitors, and to

require and obtain from them or any of them such information as may to him seem necessary or proper respecting the abatement of the suit, or respecting the same having become defective and the change or transmission of interest or liability, and respecting the person or persons by and against whom the suit and proceedings ought to be revived, or the decree or order carried on and prosecuted; for which purposes the Master shall be at liberty to proceed in the absence of any of the parties or solicitors neglecting or refusing to attend his summons.

2. In case the Master shall, by the means aforesaid or otherwise, obtain sufficient information for his guidance in this behalf, he shall be at liberty to certify the abatement of the suit, or that the same has become defective and the change or transmission of interest or liability.

3. The Master's certificate shall be filed by such person as the Master may direct, and then such order to the effect of the usual order to revive or of the usual supplemental decree as is mentioned in the section numbered 52 of the Act "to amend the Practice and course of proceeding in the High Court of Chancery," passed in the Session of Parliament holden in the 15 & 16 Vict., shall be drawn up by the registrar upon the Master's certificate, which shall be deemed equivalent to such allegation as is in the said section mentioned; and the course of proceeding upon and the effect of an order obtained under these present provisions shall be the same in all respects as if the order had been obtained upon such allegation as aforesaid.

4. In case the Master shall not be able to obtain sufficient information for his guidance in certifying as aforesaid, he shall be at liberty to certify the abatement of the suit, or that the same has become defective and the change or transmission of interest or liability, and that by reason thereof he is unable to dispose of the proceeding depending before him in the suit; upon which certificate the Court shall make such order as it shall think proper on all or any of the parties for the further prosecution of the suit, or for the final disposal thereof, and for the payment of the costs thereof, including any of the costs which may have been incurred by reason of the conduct of the parties.

5. In the event of the parties or their solicitors refusing or neglecting, within a time to be fixed by the Master, to file or to bring before the Court any such certificate as aforesaid, or to serve any order when drawn up as aforesaid, then by direction of the Master the certificate may be filed or brought before the Court, or the order may be served, by the solicitor for the time being to the Suitors' Fund; and the Court is hereby empowered to order payment of the costs and expenses of the solicitor to the Suitors' Fund out of such of the funds in the suit, or by such parties as to the Court shall seem just; and in case payment thereof cannot be obtained by any of the means aforesaid,

said, the same, by the direction of the Court, may be paid out of the Suitors' Fund.

6. In any cause, matter or thing which may from time to time be depending before or have been referred to a Master, it shall be lawful for him, in such way as he may think fit, to obtain the assistance of an accountant, the better to enable him to make any report or certificate, and to act upon the certificate of such accountant; and the allowances in respect of fees to the accountant shall be regulated by the Taxing Master of the Court.

7. In any cause, matter, or thing which may from time to time be depending before or have been referred to a Master he shall be at liberty to certify specially any decision at which he may arrive, or any other matter relating thereto, in order to obtain a decision or direction by or from the Court for his guidance in the further proceedings, or to enable any party to obtain the opinion of the Court with reference thereto.

8. It shall be lawful for the Lord Chancellor to appoint a fit person to act in the office of any Master as an additional temporary clerk, and in assistance to the Master's ordinary clerks, in such manner as the Master may direct; and every such temporary clerk may be removed by the Lord Chancellor as he may think fit, and shall receive, so long as he shall be so employed, such salary as the Lord Chancellor shall with the approbation of the Commissioners of her Majesty's Treasury order, but shall not be entitled to or receive any compensation upon or by reason of the Master being released from his duties, or removed by resignation, death, or otherwise.

9. The salaries given under this Act shall grow due from day to day, but shall be payable, under an order of the Lord Chancellor, on the third day of each of the months of February, May, August, and November, in every year, or on such other days as the Lord Chancellor shall from time to time direct, and shall be paid to the persons entitled thereto respectively, or their respective executors or administrators, out of the fund standing in the name of the Accountant-General of the Court of Chancery to the account intitled "The Suitors' Fee Fund Account," subject to the payment of such salaries and sums of money as are now payable thereout.

10. In this Act the expression "the Lord Chancellor" shall be construed to mean the Lord High Chancellor of Great Britain for the time being, and to include or be applicable to the Lord Keeper or Lords Commissioners for the custody of the Great Seal of the United Kingdom for the time being.

#### BANKRUPTCY.

17 & 18 VICT. c. 119.

Present vacancies not to be filled up except upon special order of Lord Chancellor; s. 1.

Lord Chancellor may declare future va-  
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cancies not to be filled up, except upon special order; s. 2.

Certain provisions of 1 & 2 W. 4, c. 56, s. 9, repealed, and registrars may be removed upon certificate of the Lords Justices; s. 3.

Power to appoint a person to act as registrar temporarily; s. 4.

Remuneration of a person appointed to act under last preceding section; s. 5.

Power to appoint substitute in illness or unavoidable absence of Commissioner or registrar; s. 6.

Power to appoint substitute in reasonable absence of country Commissioner or registrar; s. 7.

Substitute to have like authority, &c.; s. 8.

Appointments of messengers and ushers; s. 9.

Sect. 76 of 5 & 6 Vict. c. 122, and sect. 49 of 7 & 8 Vict. c. 96, repealed, and salaries of officers to commence from appointment; s. 10.

Remuneration of official assignees; s. 11.

Fees may be altered by order of Lord Chancellor; s. 12.

Per centage paid to chief registrar's account may be abolished or varied by order; s. 13.

Power to fix maximum payable for fees; s. 14.

Power to make general orders; s. 15.

Where declarations of insolvency to be filed; s. 16.

Filing in country district Court effectual; s. 17.

Copies to be sent to chief registrar; s. 18.

Copy certified by country registrar to be evidence; s. 19.

Trader petitioning to show 150*l.* assets; s. 20.

Form of petition of trader; s. 21.

Proof of assets to the amount of 150*l.* to be sufficient; s. 22.

Messenger to follow instructions of official assignee; s. 23.

Extension of time for disputing adjudication; s. 24.

Excepted articles to be allowed to a bankrupt; s. 25.

An inventory and valuation of the remainder of the bankrupt's household furniture, &c., to be made, which shall not be sold without the order of a Commissioner; s. 26.

If the bankrupt shall be entitled to any allowance, his household furniture, to be taken in lieu of money; s. 27.

Construction. Short title; s. 28.

The following are the title and sections of the Act:—

An Act for regulating Appointments to Offices in the Court of Bankruptcy, and for amending the Laws relating to Bankrupts.

[11*th* August, 1854.]

Whereas by reason of a diminution of the business of the Court of Bankruptcy vacancies have not been filled up in the offices of Commissioners for the Birmingham and the Bristol districts respectively, and of a registrar for the Bristol district, and in the present state of the business of the Court it is not necessary that the same should be filled up: and whereas the Lord Chancellor ought to be empowered, in manner hereinafter mentioned, to regulate the amount of the establishment of the Court of Bankruptcy on the occurrence of future vacancies, in proportion to the amount of the business of the Court for the time being, as far as circumstances will permit: and whereas, in some other particulars, the laws relating to bankrupts and to the Court of Bankruptcy require amendment: be it enacted as follows:—

1. The vacancies now existing in the offices of Commissioners of the Court of Bankruptcy for the Birmingham and the Bristol districts respectively, and of registrar for the Bristol district, shall not, nor shall any of them, be filled up unless and until the Lord Chancellor shall, by order, declare that, having regard to the state of the business of the Court, he is of opinion that the said vacancies, or such one or more of them as shall be mentioned in the order, ought to be then filled up; and thereupon the said vacancies, or such one or more of them as aforesaid, may be filled up, as if this Act had not been passed.

2. Upon any future vacancy in the office of Commissioner, by reason whereof there shall be one Commissioner only acting in the Birmingham, Bristol, Leeds, Liverpool, or Manchester district, and upon any future vacancy in the office of registrar for any of the same districts, the Lord Chancellor may, if, having regard to the then state of the business of the Court, he shall so think fit, by order declare that such one or more of the vacancies aforesaid as shall be mentioned in the order shall not be filled up until further order, and thereupon the same shall not be filled up accordingly, unless and until the Lord Chancellor shall, by order, declare that, having regard to the then state of the business of the Court, he is of opinion that any such vacancy as aforesaid ought to be then filled up, and thereupon the same may be filled up, as if this Act had not been passed or such first-mentioned order had not been made.

3. And whereas by section nine of an Act passed in the Session of Parliament 1 & 2 Wm. 4, c. 56, it is enacted, that it shall be lawful for his Majesty, his heirs, and successors, to remove any of the registrars and deputy-registrars of the Court of Bankruptcy upon a certificate from the Court of Review, or one of the subdivision Courts, of some suffi-

most reason to be named therein for such removal: now be it enacted as follows:

The said enactment shall be repealed; and it shall be lawful for her Majesty, her heirs and successors, to remove the chief registrar or any of the registrars for the time being of the said Court, acting either in London or in the country, upon a certificate from the Lords Justices for the time being of the Court of Appeal in Chancery, of some sufficient reason to be named therein for such removal.

4. Where, upon any vacancy in the office of registrar for London, or a country district, it shall seem to the Lord Chancellor that it is necessary that some person should be then appointed to attend upon and assist a Commissioner there acting, but that it is not expedient that a permanent appointment to the office of registrar there should be then made, the Lord Chancellor may appoint a fit person to act as registrar in and for London or the country district, as the case may require, and in that capacity to attend upon and assist a Commissioner there acting, until further order.

5. Every person appointed to act under the last preceding section may receive from time to time, out of the moneys for the time being standing to the credit of the chief registrar's account, such sum or sums by way of remuneration for his services in the period during which he shall act, not exceeding in the whole the amount to which he would have been entitled as salary for the same period under a permanent appointment as registrar to act in London or in a country district, as the case may be, together with such further sum (if any) for his necessary and proper travelling expenses, as the Lord Chancellor may from time to time order.

6. Where a Commissioner or registrar, acting in London or in a country district is temporarily hindered from discharging his duty by illness or unavoidable absence, the Lord Chancellor may, if he shall so think fit, appoint a fit person, who in the case of a Commissioner shall be a serjeant or barrister-at-law of at the least seven years' standing at the bar, to act in the stead of such Commissioner or registrar as aforesaid, during his illness or unavoidable absence.

7. Where a Commissioner or registrar acting in a country district is absent for any reasonable cause, the Lord Chancellor may, if he shall so think fit, from time to time appoint a fit person, who in the case of a Commissioner shall be a serjeant or barrister-at-law of at the least seven years standing at the bar, to act in the stead of such Commissioner or registrar as aforesaid, during such period or periods as shall not exceed in the whole the period of two calendar months in any one period of twelve consecutive calendar months.

8. Every serjeant, barrister, or other person who shall under this Act act in the stead of a Commissioner or a registrar, or in succession to a registrar, but without a permanent appointment as registrar, may and shall, while his appointment remains in force, have, discharge, and execute all the jurisdiction, rights,

powers, duties, and authorities belonging to the office of the Commissioner or registrar in whose stead or in succession to whom he shall for the time being act, with full validity and effect to all intents and purposes.

9. No vacancy in the office of messenger or of usher shall be hereafter filled up without the sanction of the Lord Chancellor first obtained.

10. And whereas by sect. 76 of an Act passed in the 5 & 6 Vict. c. 122, it is enacted, that a succeeding Judge, Commissioner, registrar, and deputy registrar respectively shall be paid such proportionate part of their respective salaries as shall be accruing or shall accrue from the day of the resignation, death, or removal from office of the preceding Judge, Commissioner, registrar, or deputy registrar respectively; and by sect. 49 of an Act passed in the 7 & 8 Vict. c. 96, it is enacted, that the successor of any registrar or deputy registrar dying, resigning, or being removed shall be entitled to receive such portion of his salary as shall be accruing or shall accrue from the day of such death, resignation, or removal; now be it enacted as follows: The said enactments shall be repealed; and the salaries of all Commissioners and other officers of the Court of Bankruptcy to be hereafter appointed shall commence from the respective times when they shall respectively be so appointed, and not from the times when the respective vacancies shall have occurred.

11. The Lord Chancellor shall, within six calendar months after the passing of this Act, with the advice and assistance of the said Lords Justices and of any two or more of the Commissioners, by order, direct according to what scale or rate, and in what manner, and with reference to what considerations, the remuneration of an official assignee for his services in respect of a bankrupt's estate shall be calculated and allowed; and as from the day on which such order as aforesaid shall take effect, the section of the Bankrupt Law Consolidation Act, 1849, numbered 44, shall be repealed, and thenceforth the Court shall not order or allow any sum to be paid out of a bankrupt's estate to the official assignee thereof, as a remuneration for his services, otherwise than in pursuance of and in accordance with the provisions and directions of such order as aforesaid, or any order amending or substituted for the same; and the Lord Chancellor may from time to time thereafter, with the advice and assistance aforesaid, by order, regulate such remuneration as aforesaid; and the provisions and directions respecting such remuneration as aforesaid contained in the general order of the 19th of October, 1852, numbered 130, shall remain in force and be observed until the same shall be abrogated or varied by any order to be made under this Act.

12. The Lord Chancellor may, with the advice and assistance aforesaid, from time to time by order vary or abolish the fees by the Bankrupt Law Consolidation Act, 1849, made pay-

able by stamps, or any of them, or other the fees for the time being payable in relation to any of the proceedings in matters of bankruptcy or arrangement in the Court of Bankruptcy or the Court of Appeal in Chancery, and, if and when it shall seem necessary or expedient, fix and impose upon or in relation to such proceedings as aforesaid, or any of them, other fees, or fees of an altered amount, but not of an amount higher than that by the last-mentioned Act prescribed, as far as regards any fee or stamp duty thereby expressly made payable in respect of any document therein specified; and the provisions of the same Act respecting stamps are hereby extended and applied to and in the case of such stamps as may be required by any order to be made under this Act.

13. The Lord Chancellor may, with the advice and assistance aforesaid, if it shall to him seem expedient, abolish such per centage as is by the Bankrupt Law Consolidation Act, 1849 (section 54), made payable to the chief registrar's account, or reduce the lowest rate thereof below one-eighth of a pound per centum, and again re-impose the said per centage, and from time to time regulate and vary the same, but so that the highest rate thereof shall not ever exceed the highest rate made payable by the said Act.

14. The Lord Chancellor may, with the advice and assistance aforesaid, from time to time by order fix a maximum sum to be paid in any matter of bankruptcy or arrangement in respect of the fees, stamp duties, per centages, or other charges for the time being payable to or in aid of the fund standing to the credit of the chief registrar's account, and raise or lower the same as may seem expedient; and when in any matter the total sum paid in respect of such fees, stamp duties, per centages, or other charges as aforesaid, shall amount to the maximum sum for the time being fixed (which shall be ascertained and certified in such manner and by such person as the Lord Chancellor, with the advice and assistance aforesaid, may by order direct), then and in that case there shall not be any further or other fee, stamp duty, per centage, or charge whatsoever paid or payable in relation to the same matter, or any of the proceedings taken or to be taken therein, to or in aid of the fund standing to the chief registrar's account.

15. The section of the Bankrupt Law Consolidation Act, 1849, numbered 8, is hereby repealed, but not so as to invalidate any rule or order already made thereunder; and the Lord Chancellor may, with the advice and assistance aforesaid, from time to time by order vary or abrogate all or any of the rules and orders already made thereunder, or under any other authority, and now in force, in relation to matters of bankruptcy or arrangement, and may from time to time make and alter or revoke such orders as may to him seem expedient for the better execution of the last-mentioned Act and this Act, or either of them, or any other Act relating to bankruptcy,

and for the regulation of the practice in matters of bankruptcy and arrangement, and the form and mode of proceeding therein before and by the Court of Bankruptcy, and for the regulation of the duties of the several officers of the Court of Bankruptcy, and the fees, costs, charges, and allowances, as well of solicitors and of messengers and ushers, as also of auctioneers, appraisers, brokers, valuers, and accountants employed by assignees, messengers, or bankrupts, and for the taxation thereof respectively.

16. Every declaration of insolvency to be filed on or after the 1st day of September, 1854, for the purposes of the Bankrupt Law Consolidation Act, 1849, under the authority of that Act as altered by the Act of the Session of Parliament holden in the 15 & 16 Vict. c. 77, shall, in lieu of being in every case filed in the office of the chief registrar, be filed in the Court within the district whereof the trader filing the same shall have resided or carried on business for six calendar months next immediately preceding the time of the filing thereof; and the same shall be filed, in the case of the London district, in the office of the chief registrar, and in the case of the country districts with the respective registrars thereof.

17. The filing of a declaration of insolvency with the registrar of a country district shall have the same effect to all intents and purposes as the filing thereof in the office of the chief registrar would now have.

18. The several registrars acting in the country shall transmit by post copies of all declarations of insolvency filed with them, immediately on the filing thereof respectively, to the chief registrar, who shall immediately on the receipt thereof respectively cause the same to be entered in a proper book to be kept by him for that purpose.

19. A copy of a declaration of insolvency purporting to be certified by a registrar of a country district as a true copy of a declaration filed in the Court for that district shall be received as evidence of such declaration as aforesaid having been filed.

20. The section of the Bankrupt Law Consolidation Act, 1849, numbered 93, is hereby repealed as from the 1st day of September, 1854; and on and after that day any trader liable to become bankrupt may petition for adjudication of bankruptcy against himself, but, unless he shall forthwith after filing his petition, and before adjudication of bankruptcy thereunder, make it appear to the satisfaction of the Court that his available estate is sufficient to produce the sum of 150*l.* at the least, his petition shall be dismissed, and no further petition shall be filed by him in the same district without the leave of the Court first obtained, and the adjudication on any further petition shall be subject to the like condition as aforesaid as to his available estate.

21. The form of petition for adjudication of bankruptcy presented by a trader himself which is specified in the Schedule (O) to the last-

mentioned Act annexed shall, on and after the 1st day of September, 1854, be altered by the words "produce the sum of 150*l.* at the least" being inserted therein, in lieu of the words "pay his creditors at least 5*s.* in the pound."

22. Proof by a trader petitioning as aforesaid of the sufficiency of his available estate to the extent required by this Act shall have the same force and effect, to all intents, and for all the purposes of the Bankrupt Law Consolidation Act, 1849, as proof by him of the sufficiency of his available estate to the extent required by that Act would now have for the same purposes.

23. After the appointment of an official assignee to act in any bankruptcy, and before the choice of assignees by the creditors, the messenger shall follow the instructions of the official assignee, subject to the directions and control of the Court, with respect to the taking possession of any part of the bankrupt's estate or effects of which the messenger shall not have then already taken possession, and the keeping possession of any part thereof of which he shall then already have taken or shall at any time thereafter take possession.

24. The section of the Bankrupt Law Consolidation Act, 1849, numbered 233, limiting the time within which a person adjudged bankrupt may dispute the adjudication, shall, in the case of every person who shall be adjudged bankrupt on or after the 1st day of September, 1854, be construed and acted upon for all purposes whatsoever as if the words "two calendar months" were therein inserted, in lieu of the words "twenty-one days."

25. Every person who shall be adjudged bankrupt on or after the 1st day of September, 1854, shall be entitled to retain, for the use of himself and his family, under the name of excepted articles, such articles of household furniture, and tools, implements of trade, and other like necessities as he shall specify and select, not exceeding in the whole the value of 20*l.*; and such excepted articles shall not be subject to be sold or disposed of in the bankruptcy, or to be taken in execution at the suit of any creditor entitled to prove under the bankruptcy; and in all cases there shall be filed with the proceedings in the Court an inventory of such excepted articles, with a valuation of the same respectively, with a certificate signed by the appraiser or other person making such valuation attesting the truth thereof, and stating when and where such articles were seen and valued; and the reasonable expenses and charge of and for such valuation, when taxed, shall be paid by the official assignee out of the proceeds of the estate of the bankrupt, under the order of the Commissioner.

26. Except where the Court shall otherwise order, an inventory and valuation of the remainder of the bankrupt's household furniture, tools, and implements of trade shall be made and delivered to the official assignee; and where the bankrupt shall, by writing under his hand, request the assignees not to dispose of the same, such household furniture, tools, or

implements of trade shall not be disposed of by the assignees without previous order of the Commissioner; and the Commissioner may, upon the application of the bankrupt, postpone the removal and sale of the same for such time as the Commissioner, in the exercise of his discretion, shall think fit, having regard to the probable value of the other property of the bankrupt, and he may permit and suffer the same to remain in the use and occupation of the bankrupt, upon such terms and conditions and with such security as to the Commissioner may seem proper, so as to protect the same from being made liable to or sold for the payment of any rent, rates, or taxes which might become due thereafter for or on account of any house or premises wherein such property may be placed, and from being made liable to be sold for the payment of any debt, claim, or demand whatsoever by reason of being in the possession and occupation of the bankrupt; and the Commissioner may, at any time when he shall think it necessary so to do, order the same to be taken by the messenger or assignee, and to be sold for the benefit of the creditors.

27. If the other estate and effects of the bankrupt shall in the due administration thereof pay to the creditors such an amount of dividend as shall entitle the bankrupt to an allowance in money, and the household furniture, tools, and implements of trade so contained in the last-mentioned inventory and valuation shall not have been sold, the bankrupt shall accept the same at the valuation so originally put upon the same, or a sufficient portion thereof, to be selected by him, with the approbation of the assignees, as and for his allowance instead of money; and such articles of household furniture, tools, and implements of trade so accepted shall be delivered to him, and shall thereupon, without any deed of assignment, revert in the bankrupt as his own property, and the official assignee shall sell for the benefit of the creditors such portions of such articles as the bankrupt shall not be entitled to retain, and such deduction may be made from his allowance for any diminution in value in such articles occasioned by his having continued to use them since the bankruptcy as the Commissioner may think reasonable (to be either paid by the bankrupt in money or the amount thereof in value retained in goods).

28. This Act shall be construed, together with the Bankrupt Law Consolidation Act, 1849, as one Act, and may be cited as "The Bankruptcy Act, 1854."

#### REAL ESTATE CHARGES.

17 & 18 VICT. c. 113.

Heir or devisee of real estate not to claim payment of mortgage out of personal assets. Not to affect rights claimed under any will, &c., before 1st January, 1855; s. 1. Extent of Act; s. 2.



The following are the titles and sections of the Act :

**An Act to amend the Law relating to the Administration of the Estates of deceased Persons.**  
[11th August, 1854.]

Whereas it is expedient that the law whereunder the real and personal assets of deceased persons are administered should be amended : be it enacted as follows :

1. When any person shall, after the 31st of December, 1854, die seised of or entitled to any estate or interest in any land or other hereditaments which shall at the time of his death be charged with the payment of any sum or sums of money by way of mortgage, and such person shall not, by his will or deed or other document, have signified any contrary or other intention, the heir or devise to whom such land or hereditaments shall descend or be devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate or any other real estate of such person, but the land or hereditaments so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage debts with which the same shall be charged, every part thereof, according to its value, bearing a proportionate part of the mortgage debts charged on the whole thereof : provided always, that nothing herein contained shall affect or diminish any right of the mortgage on such lands or hereditaments to obtain full payment or satisfaction of his mortgage debt either out of the personal estate of the person so dying as aforesaid or otherwise : provided also, that nothing herein contained shall affect the rights of any person claiming under or by virtue of any will, deed, or document already made or to be made before the 1st of January, 1855.

2. This Act shall not extend to Scotland.

## NOTICES OF NEW BOOKS.

*A Treatise upon the Law of Life Assurance; upon the Constitution of Assurance Companies, the Construction of their Deeds of Settlement, the Sale of Reversionary Interests, and Equitable Liens arising in connection with Life Policies. With an Appendix of Precedents for the Assignment of Policies by way of Sale, Mortgage, and Settlement; Notes of Cases; Statutes; and an Index of Private Acts obtained by Insurance Companies.* By CHARLES JOHN DUNYON, M.A., of the Inner Temple, Esq., Barrister-at-Law. London : Wildy & Sons, 1854. Pp. xvi., 523.

THE growing interest in all that relates to Life Assurance, and the increasing importance of the institutions by which it is

conducted, render this Essay on the Law and practice of Life Assurance most acceptable to the Legal Profession, to the managers of life offices, and to the insuring public. The Author states his endeavour to condense into a small compass such an amount of legal information as he has imagined likely to be useful, and that he has most ably performed his task the following Table of Contents will show :—

“ *Part I.*—Chapter 1. The nature of the contract at Common Law and as modified by the Statute Law.—How far it fulfils the legal conditions of a wager, or necessarily operates as an indemnity.—The Irish decisions.—*Godsall v. Boldere*.—The Gambling Act and its provisions.—The insurable interest.—The 8 & 9 Vict. c. 109.

Chapter 2.—The premises of the contract.—The disclosure of material facts.—The form and manner of the proposal.—The construction of its stipulations.—The effect of warranties and representations.

Chapter 3.—The private and medical referees.—Their duties and responsibilities.—The right of the latter to remuneration for their professional services.

Chapter 4.—The policy.—Its form, execution and conditions, and the general rules of its construction.

Chapter 5.—The onus of proof of the truth of the warranties, &c.—Indisputable and unchallengeable policies.—The right of the insurers to set aside the contract in certain cases.—The return of the premium, and the reformation of the contract.

Chapter 6.—Insurances against accident.—Insurances against the birth of issue.—Fidelity or guarantee policies.—The combination of guarantees and life insurance.

Chapter 7.—The insurer, and herein of the constitution of insurance offices.

Chapter 8.—Charters of incorporation and the construction of deeds of settlement, and private Acts of Parliament amending the same, and giving special powers to insurance companies, and herein of the partnership rights of the members *inter se*.

Chapter 9.—Friendly societies.

Chapter 10.—The powers and duties of directors, officers and agents.

*Part II.*—Chapter 1. The assignment of policies for valuable consideration, and herein of considerations, of the bankruptcy of the assured, and conflicting equities of consecutive incumbancers.

Chapter 2.—The evidences of contracts by which sales are effected or liens created.

Chapter 3.—Notice.

Chapter 4.—Concerning advances by insurance offices by way of mortgage of their own policies with or without additional security, and herein of the securities for money usually accepted by them.

Chapter 5.—The sale of reversionary interests.

Chapter 6.—Equities arising from contracts other than contracts of sale, or the creation of liens by the assured.

Chapter 7.—The application of policies as securities for the fines payable on the renewal of leaseholds for lives or years.

Chapter 8.—Voluntary assignments.

*Part III.*—Chapter 1. The rights and interests of persons under disabilities.—Infancy.

—Coverture.—Lunacy.—Felony.

Chapter 2.—The claim and its payment.—The proof of death.—The receipt.—The custody of the evidences of title.

Chapter 3.—The enforcement of claims by action at law or suit in equity.—Interpleader.—The construction of stipulations for the limitation of the liability of the insurers.

Chapter 4.—Annuities.

Chapter 5.—Stamps.

Chapter 6.—The Succession Duty Act, 1853.—The Income Tax Acts, 1853.—The prospects of future legislation on the subject of life assurance as developed in the report of the Select Committee of 1853.—Recommendations for the amendment of the law."

There is also added an *Appendix*, containing the following useful precedents:—

"Conditions of sale; Assignment upon sale of a policy of assurance effected by the vendor upon the life of a nominee [with variations when the policy is on the life of the vendor]; Assignment upon sale of a policy of assurance, [to be indorsed upon the policy]; Assignment by a creditor of a policy of assurance effected by him upon the life of his debtor to the latter after satisfaction of the debt, [to be indorsed upon the policy]; Mortgage of a policy of assurance upon the life of the mortgagor for securing a gross sum and interest thereon; Deed of further charge; Mortgage of a policy of assurance to three persons upon a joint account, with provisions for effecting a new policy in the event of forfeiture; Deed of covenant with sureties, and the assignment of a policy for securing a sum of money repayable by instalments; Deed of covenant with the collateral security of a policy effected upon the life of the debtor in the name of the creditor for securing a sum already due and future advances; Assignment of a policy of assurance in contemplation of marriage upon trusts to be declared by an indenture of even date therewith; Settlement of monies assured by a policy on the life of the intended husband assigned by a deed of even date to the trustees; Settlement of a policy of assurance on the life of the intended husband (short form); Voluntary settlement."

The remainder of the book consists of the following subjects:—

"Form of a resolution adopted by the Equitable Society for the fluctuation of the rate of interest of their securities with the rise and fall of consols; Reports of cases decided in the County Courts upon the claim of the medical referees of the assured to the payment of a fee

by the company; How far the principle of the *Thellusson Act* is applicable to trusts for the payment of premiums upon policies of insurance; The report of the Select Committee on assurance associations; The Annuity Act, 53 Geo. 4, c. 141; The Joint-Stock Companies' Registration Act, 7 & 8 Vict. c. 110; Act amending the same, 10 & 11 Vict. c. 78; Index to private Statutes obtained by insurance offices; General index."

We shall give in an early Number the notes of the learned author in reference to "Agents."

## FORFEITURE OF LEASEHOLDS.

### BREACH OF COVENANTS TO INSURE AND REPAIR.

*To the Editor of the Legal Observer.*

THERE are two matters in connexion with the grant of leases, especially when for long terms for building purposes, to which we have for many years wished to call the attention of the Profession, through the medium of your Journal, with a view to their being taken into consideration, for it has long appeared to us that some of the present arrangements between landlord and tenant are such as to induce dishonesty on the part of the former, injustice to the latter, and no little culpability in solicitors, who by the insertion of the objectionable covenants in the form of the leases which they usually prepare, place the parties in a position, of the effect of which the lessees are entirely ignorant. Indeed it is scarcely possible to believe that the large number of persons, who accept leases and expend thousands in buildings, can be aware that by the omission for a few hours to pay an insurance premium, they may incur a forfeiture, without relief under any circumstance, of the entire property to a landlord, whose sole interest may be a small ground-rent with a reversion at the expiration of a long term of so little value as to be scarce a subject of computation.

The same objection exists to a very considerable extent in reference to the breach or non-performance of a repairing covenant in a building lease, by which, although the lessor may have not a computable interest in the property beyond his ground-rent for perhaps the same term, the unhappy lessee, as in the former case, though not so inexorably, may, in certain circumstances, within even a short period of the commencement of a term, forfeit all his property for an omission purely accidental, involving no blame or dishonesty whatever.

The present system, both in regard to insurance and repairing covenants, is productive of very great, not to say cruel oppression, and in some cases of irreparable injury to lessees. On every occasion of a sale of leaseholds, as is shown by daily experience, the objection raised to titles on these grounds can be, and is only

met by an expedient equally unjustifiable,—a clause in the contract that the production of the last receipt for rent shall be evidence that all the covenants have been duly performed, when at the very time of signing it the seller may be wholly without evidence to that effect, and may have reason to suspect the existence of breaches which may subject the unhappy purchaser to a loss of the property for which he may be paying thousands.

The long existence of this injustice can only be explained on the principle that lessees are usually less rich than lessors, and that the solicitors for lessors dictate the terms to which the lessees, in the relative positions of the parties, are compelled to submit without reference to consequences, and the practice can only be remedied by the Profession at large.

There are other clauses, too commonly inserted in leases, which well deserve consideration,—those which stipulate that all deeds of settlement, mortgage, &c., shall be prepared by the solicitor for the lessors: thus making the latter acquainted, not very properly or delicately, with the private affairs of the lessee for a selfish and unworthy object, in which the lessor has no interest, but which is in many cases injurious, and always derogatory. And, again, the unqualified restriction from alienation, which also frequently works the greatest injustice by enabling the grantors to withhold their assent for a base and unworthy object.

In a recent instance, a peremptory application has been made from some solicitors in the city requiring and insisting (under pain of ejectment), on behalf of a very recent purchaser of the earlier term, on the surrender of some leaseholds of which the lessee has been in possession, under an assignment, near 30 years, on the ground of non-insurance,—the interest of the former being a small ground-rent with a reversion at the end of 40 years. This is a state of things which we earnestly recommend to the attention of the Profession, for a dishonest party may exercise his power, involving very cruel injustice and oppression, under the pretext of redressing a wrong, where in fact none has been committed.

Within a few days we have heard of a landlord making a public boast that his tenant, on the faith of his lease, had laid out 4,000*l.*, and that, in consequence of an accidental slip in the performance of one of the covenants, the landlord had made him forfeit his lease, and lose the whole amount of his outlay almost immediately on the completion of the building.

We have heard of another grievance, where a physician took a lease, with a covenant to insure, and the house wanting repair, he expended 1,200*l.* and went out of town. In the meantime came quarter-day, and the insurance letter, which was not forwarded by the servant in charge, who thought that being printed it was of no importance. Immediately on his return, he paid the premium, but a few days too late, and he was forthwith served with an ejectment, forfeited his lease, and lost, or rather was robbed, of his whole outlay. These,

air, are outrages which no poor man could perpetrate with impunity,—and such, as far as common honesty is concerned, ought to be cognizable before a magistrate. It is true that no honest man,—no gentleman in the proper and highest sense of the term,—would do such things, but there always persons, both in and out of the Profession, who are ready to seize every opportunity, *per fas aut nefas*, of making money. W. & S. C.

## POINTS IN EQUITY PRACTICE.

### INJUNCTIONS TO STAY PROCEEDINGS AT LAW.

THE MASTER OF THE ROLLS, in *Lovell v. Galloway*, 17 Beav. 1, said,—“For the purpose of rendering plain the statements I am about to make, with respect to what I conceive to be the practice of the Court under the 15 & 16 Vict. c. 86, s. 58, it is necessary shortly to refer to the practice of the Court before that Statute passed, both with reference to bills of discovery and to common and special injunctions.

“Formerly, the common injunction to stay proceedings at law could not be obtained upon affidavit, but only upon default of appearance or answer within the time limited by the practice. When a sufficient answer had been put in, the plaintiff could not retain the injunction, unless he could found his title to it upon some statement appearing in the answer, otherwise the defendant was entitled to have the injunction dissolved.

“But in cases of special injunctions, the Court proceeded entirely on affidavit; and without entering into the question, whether an answer was to be treated as an affidavit and might be contradicted or not, it may be stated generally, that upon special injunctions, the question was tried and decided upon the merits appearing upon the whole of the evidence.

“In that state of the practice, the Commissioners recommended and Parliament passed a clause in these words:—“That the practice of the Court of Chancery, with respect to injunctions for the stay of proceedings at law, shall, so far as the nature of the case will admit, be assimilated to the practice of such Court with respect to special injunctions generally, and such injunctions may be granted upon interlocutory applications, supported by affidavit, in like manner as other special injunctions are granted by the said Court.

“Two objects are apparent upon that section,—one is, that an abuse which had frequently occurred in the practice of this Court should be remedied, viz., that a defendant at law who seeks to stay an action shall not, in future, be at liberty to obtain an injunction as of course, by putting

on record a bill containing a merely fictitious case, praying for very long and complicated accounts, and making statements which it might be extremely difficult for the defendant to answer.

"In the report of the early Chancery Commissioners, in 1826, some very striking instances are detailed in the evidence there given. It was therefore considered necessary, that a plaintiff, on filing a bill to stay proceedings at law, should verify his bill and show that he had not stated a mere fictitious case. All that was meant by this was, that he should verify such statements as were within his own knowledge, and state on oath that he believed those statements which rested upon the information of others, or on the inferences to be drawn from those facts. It was not intended to prevent him making charges, for the purpose of drawing from the defendant a full discovery of all he knew about the facts so stated.

The other object of the section is this:—when the answer is put in, the plaintiff is not then to be precluded by it, but if there are facts stated in the answer which the plaintiff knows to be untrue, he is at liberty to bring forward evidence to satisfy the Court that the statements in the answer are not correct, and the Court may then deal with it as it shall think fit.

"If the Legislature had meant to restrict all injunctions to the precise practice which prevails in the case of special injunctions of that description, and to deprive the defendant at law of the benefit of the discovery he formerly had, this section of the Act of Parliament would never have introduced the qualifying words, 'so far as the nature of the case will admit.' It would have omitted those words altogether, for the cases would have been literally and precisely the same. But the great assistance which it was supposed a defendant in an action at law derived, who had a *bond fide* case known only by the plaintiff, which might either destroy the whole of his demand, or cut it down to a very moderate extent, was this:—that he might extract the evidence of it from the admission of the defendant himself, and that was called giving the plaintiff the benefit of the discovery. That has always been considered to be of the greatest value. If I were to allow a defendant to make affidavits, instead of putting in an answer and giving the discovery required, and if the action at law is to go on in the meantime, by what possibility could the defendant at law have the benefit of this discovery? It will be given after the action has been tried, and the jury have given their verdict, and possibly after execution has been levied for the full amount. And when the discovery is given, which may be such as would have prevented the plaintiff at law from obtaining the whole or a portion of his demand, it will no longer be available, and the plaintiff in equity may not be able to obtain the slightest advantage from it.

"It was argued that the plaintiff in equity

is not entitled to any further discovery than what might assist him in his defence, and that he is not entitled to discover the case of his antagonist. That, however, is a question to be determined on exceptions, which is the proper occasion for determining the extent of discovery to which the plaintiff is entitled. But to whatever extent a plaintiff is entitled to discovery, I am of opinion, that in a *bond fide* case, verified by affidavit, showing the Court that information may be given by the answer of the defendant, which may assist the plaintiff in wholly or partially destroying the case made against him at law, the plaintiff in equity is entitled to that discovery, and that this can only be secured to him by granting the injunction until this discovery has been given by the answer."

## LAW OF ATTORNEYS AND SOLICITORS.

### TAXATION OF COSTS.—LIMITED TIME FOR REPORT.—IRREGULARITY.—WAIVER.

AN order had been made for the taxation of a solicitor's bill of costs, and that the Master should make his report in a fortnight, or the order was to be of no effect, unless he should certify that further time was necessary to enable him to make his report. It appeared that the time had expired without any certificate having been made, but that the solicitor had afterwards attended several times before the Master and proceeded in the taxation without objecting. He at last objected, and the Master having held that his authority was gone, this motion was made.

The *Master of the Rolls* said:—"I am of opinion that the omission by the Master to certify that further time was necessary has been waived by both parties, and that the proper order is to this effect: let the Master be at liberty to certify if further time be necessary, and in case he shall so certify, let him proceed in the taxation, in the same manner as if he had enlarged the time within 14 days." *In re Field*, 16 Beav. 593.

## CONSTRUCTION OF STATUTES.

### EQUITY JURISDICTION IMPROVEMENT ACT.

#### SERVICE OF INTERROGATORIES ON DEFENDANT'S SOLICITOR.

*Held*, that the delivery of an office copy of the interrogatories to a bill by leaving it at the office of the solicitor of the defendant, without serving it on him personally, is sufficient under the 15 & 16 Vict. c. 86, s. 12, and the 17th &

18th Orders of August 7, 1852. *Bowen v. Prier*, 2 De G., M'N. & G. 899.

#### APPOINTMENT OF WIDOW TO REPRESENT ESTATE OF DECEASED PARTY IN SUIT.

In a suit by the plaintiffs against tenants and occupiers to recover tithes, one of the defendants died having no legal personal representative. On a motion to appoint the widow to represent his estate under the 15 & 16 Vict. c. 86, s. 44, the *Master of the Rolls* said, that the person appointed to represent the estate ought, as nearly as possible, to be the same as would have been appointed administrator *ad litem*, and an order was accordingly made appointing the widow to represent the deceased party. *Dean, &c., of Ely v. Gayford*, 16 Beav. 561.

### LAW OF COSTS.

#### BOND OF SURETY UPON APPOINTMENT OF NEW NEXT FRIEND.

UPON the amendment of a bill filed on behalf of a married woman by her son, Charles Henry Payne, the son was made a defendant, and the proceedings were stayed until a new next friend should be appointed in his stead. An order was accordingly made substituting a next friend, and that the son should give security to answer the defendant's costs incurred up to the date of the amendment. The *Master* had directed that the son and a surety for him should each enter into a bond for 400*l.* respectively, but the proposed surety was considered by the *Master* insufficient. A motion was now made that the son might be allowed to give his own individual security, or that the bond of the proposed surety as prepared and executed might be accepted as sufficient.

The *Master of the Rolls* said:—"I think the proper course in this case was to proceed by motion, and not by exceptions to the *Master's* report.

"The *Master* is the proper judge of the amount of security to be taken, and the only question is, whether on the change of a next friend by order of the Court, it is the practice to take the bond of a surety as well as the bond of the next friend himself, to secure the costs then incurred. \* \* \*

I have made inquiries as to the practice, and have examined the cases bearing upon the point, and am of opinion that the *Master* was right in requiring the bond of a surety as well

as that of the next friend. I cannot dispense with the bond, and therefore cannot accede to the motion." *Payne v. Little*, 16 Beav. 563.

#### OF PURCHASER IN SUIT FOR SPECIFIC PERFORMANCE.

A purchaser having unsuccessfully insisted that an instrument of republication did not sufficiently refer to the will so as to identify it, no costs were given on either side on a bill for specific performance by the vendor, who had not made out his title. *Weddall v. Nixon*, 17 Beav. 160.

### ENFRANCHISEMENTS OF COPYHOLDS.

#### MANOR OF KENNINGTON.

*To the Editor of the Legal Observer.*

SIR,—As a strong case requires to be but briefly stated, and I believe mine to be a strong case, I will reply briefly to the letter of your correspondent "A. M." (*ante*, p. 302).

It is admitted, that if a copyholder endeavours to deprive the lord of a material part of his rights, the doing so is unjust. It is also admitted, that if entitled to fines on the improved value, and fines on the ground-rent only are to be paid, he will be deprived of a material part of his rights.

The question then arises—Is the lord entitled to fines on the improved value? On that point it is not disputed, that assuming no alteration to have taken place in his rights he would be so entitled. It is, however, contended that an alteration has taken place under the licence to demise. If so, it has either arisen from the effect of the licence itself, or from contract. If the licence had such effect the copyholder has simply to refuse payment of the larger fine, and the lord cannot enforce it; and as to the refusal being an act of disloyalty, such a doctrine appears rather unsuited to the 19th century, and would warrant any act of oppression on the part of the Crown. So far from such being the fact, I have myself heard a *mandamus* moved for against the steward of a Crown manor, without the least imputation from the Court or the counsel for the Crown, that the act was disloyal or improper.

The copyholder has therefore a clear remedy if the licence effected the alteration, and in like manner, if the alteration was effected by contract independently of the licence itself, he would equally be protected against a claim to the larger fine. But if neither by operation of the licence itself, nor by contract, an alteration in the rights of the parties took place, the lord remains entitled to fines on the improved value.

As to inconvenience in granting leases, mere

inconvenience to a party who has a limited interest in property, ought not to deprive the freeholder of his rights; but the only inconvenience to which the copyholder is subjected is, that of being prevented from putting into his own pocket, as well the sum which represents his own interest, as that which would provide for the claims of another party.

With respect to a builder, it would be of no consequence to him whether his payments were made to *A.* alone, or to *A.* and *B.*, provided the total amount leaves him a fair profit on the transaction, and it must be also immaterial to him whether he pays the money as rent or as insurance.

If the lord could by the lease merely be restricted to fines on the ground-rent, this might follow, and doubtless would generally follow:—Shortly before the expiration of the lease, a surrender would be passed to one of several young nominees, who would be admitted on payment of a fine, half fine, &c., based on the ground-rent, and the lord would be deprived of all benefit from the termination of the lease for 40, 50, or 60 years.

I have no objection to enfranchisement, though I think commutation, including that of steward's fees, would be better for the copyholder; but I have a great objection to see lords of manors attacked for merely requiring payment of that to which they are entitled on a fair business-like view of their rights.

*Aug. 23, 1854.*

FAIR PLAY.

## SUCCESSION DUTY ACT, 1853.

We give the following abstract of the most important clauses of Mr. Gladstone's Succession Duty Act, 1853, by Mr. Willich, Actuary and Secretary to the University Life Assurance Company:—

Clause 10. The scale of duties payable under this Act is the same as that fixed by 55 Geo. 4, c. 184, according to the relationship of the party, viz.:

If child of the deceased, or any descendant of a child of the deceased, or the father or mother of any lineal ancestor of the deceased, 1 per cent.

If brother or sister of the deceased, or any descendant of a brother or sister of the deceased, 3 per cent.

If brother or sister of the father or mother of the deceased, or any descendant of a brother or sister of the father or mother of the deceased, 5 per cent.

If brother or sister of a grandfather or grandmother of the deceased, or any descendant of a brother or sister of a grandfather or grandmother of the deceased, 6 per cent.

If the party be in any other degree of collateral consanguinity to the deceased, or a stranger in blood to the deceased, 10 per cent.

11. When a succession devolves or a legacy is given to either a husband or wife, the amount of duty is to be calculated according to the rate payable by the one who is the nearest relation.

16. A succession subject to trusts for charitable or public purposes is chargeable with duty at the rate of 10 per cent. on the amount or value of such property.

19. Leaseholds of every denomination are liable to duty under the Succession Duty Act, and no longer under the Legacy Duty Acts.

21. The interest of every successor in real property is considered to be the value of an annuity, equal to the current value of such property, during the residue of his life, or for any less period during which he shall be entitled thereto.

The duty is to be paid by eight equal half-yearly instalments, to commence at the end of 12 months from the date of becoming so entitled to the beneficial enjoyment.

31. Cancels the tables in the Legacy Duty Act 36 Geo. 3, c. 52, and directs that the calculations be made by tables annexed to this Act.

40. The duty may be paid in advance, and discount allowed at the rate of 4 per cent. per annum.

54. The commencement of this Act to date from 19th May, 1853.

The following appear to be the exemptions:—

Husband or wife of the deceased, and the Royal Family, by clause 21 of 56 Geo. 3, c. 52.

And certain specific legacies given to bodies corporate or other public bodies, exempted from duty by 39 Geo 3, c. 73. See Schedule, 55 Geo. 3, c. 184.

Also by the 18th clause of 16 & 17 Viet. c. 51, when the whole of the successions are under 100*l.*; or when each individual succession is under 20*l.*, as in the Legacy Duty Act. See also 2nd clause, 36 Geo. 3, c. 52.

## LAW ASSOCIATION.

ANNUAL REPORT, MAY 12, 1854.

*Francis Bligh Hookey, Esq.*, in the Chair.

In laying before the members an account of the progress of the Institution during the past year, the Directors feel much pleasure in being able to report a continued improvement.

The Directors, considering it their duty to guard against any erroneous application of the funds—a duty rendered more imperative by the confidence which the subscribers repose in them—caused inquiry to be made, at the commencement of the year, into the circumstances of the several applicants, with a view of testing the accuracy of the periodical returns from the respective parties.

The result of this investigation proved creditable to the recipients; for in only two in-

stances was it found expedient to make any alteration in the allowances.

In one of these cases the existing and prospective means of the applicant appeared to warrant a present reduction, and probably the early cessation of the allowance altogether. In the other case the applicant's friends were resorted to as being in a position to render assistance, and her allowance from the Association was reduced, upon an arrangement being made with her family, whereby they are to contribute an annual sum, equal to the grant from the Association.

During the year, one new case of the primary class has come before the Board, in which destitution and physical incapability to obtain support found that prompt and substantial relief which it is the distinguishing principle of this Institution to afford.

A case of the same class has also occurred where assistance had been rendered many years ago to the applicant and other members of her family, but had been discontinued, owing to their improved condition. The allowance on the sad return of the necessity has been now revived, and has proved essentially serviceable.

In another case, the Directors have returned to the widow of a gentleman, who had formerly been a member but had ceased to subscribe, the amount which he had contributed to the funds.

The total amount expended out of the funds of the Society in the relief of applicants of the primary class is 815*l.*; that to the secondary class has been 197*l.*, out of the 200*l.* placed at the disposal of the Directors to be applied by them towards the relief of such cases. Considering the numerous applications of this latter description, the Directors submit to the General Court the propriety of setting apart a similar sum for the current year.

An event has happened during the past year which will be deeply felt by all the members of the Society—namely, the death of Mr. Augustus Warren, who had for several years filled the office of Joint Treasurer, with Mr. Kinderley. Mr. Warren had been connected with the Institution almost from its foundation; and the Directors consider it a just tribute to his memory to record their testimony to the zeal and attention uniformly evinced by him in his endeavours to promote the prosperity of the Institution. Part of the duty devolving upon the General Court this day will be to elect another treasurer in his place.

The Life Subscriptions contributed in the year, amount to 151*l.* This has been added to the funded property, together with a further sum of 23*l.* 17*s.* 6*d.*, and the stock has now reached the sum of 21,600*l.*, Three-and-a-Quarter per Cents.

The Annual Subscriptions amount to 541*l.* 16*s.*

The Directors have much pleasure in reporting an increase in the list of new members, the number during the past year having been 31, while the average number for several years past had been only 12.

The Directors, however, again urge the members to use every exertion to introduce new subscribers, and thereby to increase the power of extending the benefits of the Institution, which, it cannot be too often repeated, the widow or child of a deceased member has upon application never yet failed to obtain.

(By order of the Board),

JOHN MURRAY, *Secretary.*

## INNS OF COURT EXAMINATION.

*Michaelmas Term, 1854.*

THE Council of Legal Education have approved of the following Rules for the Public Examination of Students:—

The attention of the Students is requested to the following Rules of the Inns of Court:—

“As an inducement to Students to propose themselves for Examination, Studentships shall be founded of fifty guineas per annum each, to continue for a period of three years, and one such Studentship shall be conferred on the most distinguished Student at each Public Examination; and further, the Examiners shall select and certify the names of three other Students who shall have passed the next best examinations; and the Inns of Court to which such Student belong, may, if desired, dispense with any Terms, not exceeding two, that may remain to be kept by such Students previously to their being called to the Bar. Provided that the Examiners shall not be obliged to confer or grant any Studentship or Certificate, unless they shall be of opinion that the Examination of the Students they select has been such as entitles them thereto.”

“At every call to the Bar those Students who have passed a Public Examination, and either obtained a Studentship or a Certificate of Honour, shall take rank in seniority over all other Students who shall be called on the same day.”

“No Student shall be eligible to be called to the Bar who shall not either have attended during one whole year the Lectures of two of the Readers, or have satisfactorily passed a Public Examination.”

### RULES FOR THE PUBLIC EXAMINATION OF CANDIDATES FOR HONOURS, OR CERTIFICATES, ENTITLING STUDENTS TO BE CALLED TO THE BAR.

An examination will be held in next Michaelmas Term, to which a Student of any of the Inns of Court, who is desirous of becoming a Candidate for a Studentship or Honours, or of obtaining a Certificate of fitness for being called to the Bar, will be admissible.

Each Student proposing to submit himself for Examination, will be required to enter his name at the Treasurer's Office of the Inn of Court to which he belongs, on or before Monday, the 23rd day of October next, and he will further be required to state in writing whether his object in offering himself for Examination

is to compete for a Studentship or other Honourable distinction; or whether he is merely desirous of obtaining a Certificate preliminary to a Call to the Bar.

The Examination will commence on Monday, the 30th October next, and will be continued on the Tuesday and Wednesday following.

It will take place in the Benchers' Reading Room of Lincoln's Inn; and the doors will be closed 10 minutes after the time appointed for the commencement of the Examination.

The Examination by printed Questions will be conducted in the following order:—

*Monday Morning, the 30th October, at half-past nine, on Constitutional Law and Legal History; in the Afternoon, at half-past One, on Equity.*

*Tuesday Morning, the 31st October, at half-past Nine, on Common Law; in the Afternoon, at half-past One, on the Law of Real Property, &c.*

*Wednesday Morning, the 1st November, at half-past Nine, on Jurisprudence and the Civil Law; in the Afternoon, at half-past One, a Paper will be given to the Students including Questions bearing upon all the foregoing Subjects of Examination.*

The oral Examination will be conducted in the same order, during the same hours, and on the same subjects, as those already marked out for the Examination by printed Questions, except that on *Wednesday Afternoon* there will be no oral Examination.

The oral Examination of each Student will be conducted apart from the other Students; and the character of that Examination will vary according as the Student is a Candidate for Honours or a Studentship, or desires simply to obtain a certificate.

The oral Examination, and printed Questions, will be founded on the Books below mentioned; regard being had, however, to the particular object with a view to which the Student presents himself for Examination.

In determining the question whether a Student has passed the Examination in such a manner as to entitle him to be called to the Bar, the Examiners will principally have regard to the general knowledge of Law and Jurisprudence which he has displayed.

A Student may present himself at any number of Examinations, until he shall have obtained a Certificate.

Any Student who shall obtain a Certificate may present himself a second time for Examination as a Candidate for Studentship, but only at one of the three Examinations immediately succeeding that at which he shall have obtained such Certificate; provided, that if any Student so presenting himself shall not succeed in obtaining the Studentship, his name shall not appear in the list.

Students who have kept more than 11 Terms shall not be admitted to an Examination for the Studentship.

#### THE READER ON CONSTITUTIONAL LAW

and LEGAL HISTORY will expect all Students to answer any general questions relating to the History of England, and to know the outline of Constitutional Law.

The Candidates for distinction will be expected to know the progress of our Institutions and the changes in our Constitutional Government. They will be particularly examined as to the struggles in the reigns of Edward the Third and Richard the Second; to give an account of the remarkable State Trials down to the end of Queen Anne; and to be thoroughly and minutely conversant with the History of the reigns of Henry the Eighth, Elizabeth, the House of Stuart, and William the Third.

Books for the ordinary Examination will be *Rapin, Hallam, Creasy on the Constitution, and Sullivan's Lectures.*

Those for Candidates for distinction will be the *State Trials, Parliamentary History, Clarendon, Burnet, Millar, Rapin, Tindal, and Blackstone's Commentaries.*

THE READER ON EQUITY proposes to Examine in the following Books:—

1. *Smith's Manual of Equity Jurisprudence; Fonblanque on Equity*, vol. 1; *The Act for the Improvement of Equity Jurisdiction*, 15 & 16 Vict. c. 86.
2. *Mitford on Pleadings in the Court of Chancery; White and Tudor's Leading Cases* (with the notes) vols. 1 & 2; *Pothier on Partnership*, by Tudor.

Candidates for Certificates of Fitness to be called to the Bar will be expected to be well acquainted with the Books mentioned in the first of the above classes.

Candidates for Studentship or Honours will be examined in the Books mentioned in the two classes.

THE READER on the LAW of REAL PROPERTY proposes to examine in the following Books and Subjects:—

1. *Williams, Real Property; Stephen, Commentaries*, vol 1: *Sugden, Powers*, vol. 1.
2. *The Practice of Conveyancing, with reference to the framing of Purchase Deeds, Mortgages, and Settlements.*
3. *The Statutory Rules of Construction* laid down by 1 Vict. c. 26.
4. *The Liability of Purchasers to see to the Application of the Purchase-money.*
5. *The Law of Judgments with reference to Real Estate*, 1 & 2 Vict. c. 110; 2 & 3 Vict. c. 11; 3 & 4 Vict. 82.

Candidates for a Studentship, or other Honorary distinction, will be examined in all the foregoing Books and Subjects. Candidates for a Certificate will be examined in 1 and 2.

THE READER ON JURISPRUDENCE and the CIVIL LAW proposes to examine in the following Books and Subjects:—

1. *The Roman Law of Persons; of Real, Verbal, and Consensual Contracts.* The modern Commentaries employed may be



the *Institutiones* or *Commentarii Juris Romani Privati* of Warnkönig.

2. Grotius on the Natural Obligations arising from Ownership, Promises, Contracts, and Oaths. *De Jure Belli et Pacis*; lib. ii. cap. 10, 11, 12, 13. (Whewell's edition, vol. ii. pp. 18, et seq.)

3. Dig., lib. i. tit. 16, 17. *De Verborum Significatione. De Regulis Juris.*

4. Kent's Commentaries.—*Law of Nations, Lectures* iii. iv. and vi. The subjects of these Lectures must be considered in connexion with the modifications introduced into the General International Law by the practice of the present War. (Hazlitt's and Roche's *Manual of Maritime Warfare*, Appendix.)

5. Story's *Conflict of Laws*, chap. 17.

Candidates for distinction will be examined in all the foregoing books and subjects.

Candidates for a Certificate will be examined in (5), in (2) so far as regards chapters 11 and 12, and in (1) so far as the subjects there indicated are discussed in Sandars's edition of the Institutes of Justinian, and in Cumin's edition of Lagrange's Manual.

THE READER ON COMMON LAW proposes to examine in the following Books and Subjects:—

1. The ordinary steps in an Action at Law, particularly the Practice connected with the Writ of Summons—the Appearance—the Joinder of Parties, and of Causes of Action. (*Com. L. Proc. Act*, 1852, ss. 1—41 inclusive.)

2. The Elements of the Laws relating to Contracts not under Seal; together with the cases of *Lampieigh v. Braithwait*, and *Marriot v. Hampton*, and the Notes thereto. (*Smith's Lead. Cas.* 3rd ed.)

3. Rights and Remedies ex Delicto, so far as illustrated by the following Leading Cases:—*Armory v. Delamirie*; *Ashby v. White*; *Scott v. Shepherd*; and *Merryweather v. Nixon*—with the Notes thereto. (*Smith's Lead. Cas.* 3rd ed.)

4. The Law relating to Homicide and to Simple Larceny. (*Arch. Cr. Pl.* 12th ed.)

Candidates for Honours will be examined in all the above-mentioned subjects.

Candidates for a Certificate will be examined in the 2nd and 4th only of the above subjects.

By order of the Council.

EDW. RYAN, Chairman (*pro tem*).

Council Chamber, Lincoln's Inn,  
2nd August, 1854.

## SELECTIONS FROM CORRESPONDENCE.

### PROPOSED HALF-HOLIDAY ON SATURDAYS.

To the Editor of the *Legal Observer*.

SIR,—Your Number for August 12, page 292, contained a petition signed by a large and

influential body of solicitors, urging an "early-closing," or "half-holiday-on-Saturdays" movement. Now, as legal men are fond of precedents, and as many modern alterations (dignified by the name of "Reforms") in the law may be traced to, or are revivals of, what the law was some centuries ago,—it is curious to find that, even upon this point, we are copying from our forefathers, for it was ordered by the laws of King Edward the Confessor, that "from three in the afternoon of all Saturdays till Monday morning, the peace of God and of Holy Church shall be kept throughout all the kingdom."—*Stephen's Commentaries* (3rd edition), vol. 3, p. 558. J.

### LAW REFORMS.—NON-PAYMENT OF SOLICITORS' COSTS.

To the Editor of the *Legal Observer*.

THE investigation of the causes of a disease would appear to be the first step towards a remedy. With very few exceptions, the members of the Legal Profession have a hard struggle to maintain their position in society. Many of them really could not keep their standing, but for resources of various kinds, independently of their Profession, or indirectly connected with it. This is a lamentable fact, but it is unfortunately true. Show me an attorney who has preserved an upright course, and made use of no unworthy means to obtain business: and I will show you a man who has to maintain a desperate struggle to live by his profession. There are many causes for this state of things: I will only mention two.

The first is, I believe, admitted to exist by the whole Profession,—viz., the crusade of late years preached and waged against us by the various *soi-disant* law reformers; the gist and essence of many of whose projects appear to have been spitefully and insultingly to injure the attorneys.

The second I allude to is,—the conduct of the members of the Profession themselves towards each other: acting on the principle of not caring what injustice is done to their brethren, so long as their present turn is served. I could cite many proofs of the working of this leaven, but will name only two:—1st, the neglect manifested by the higher branch of the Profession of the interests of the other and larger branch. There are at least 50 Barristers in Parliament; with few exceptions, what mischievous measures have they opposed?—what beneficial improvements have they brought forward or supported? 2nd, I complain of the dishonourable conduct of professional men to their correspondents. I have before me a small list of unpaid accounts which, after doing all I could myself, I handed over to my agent, who, after some months, returned the list, after many fruitless applications, with one-half marked as defaulters. Thus neglecting to pay a brother practitioner for business done for them on their special instructions.

My letter may convey more weight if I add,

that I am no novice, but of many years' standing, and that I am one of those who have maintained their position.

G. K.

[We rejoice that our respectable correspondent has stood his ground amidst the onslaught of enemies and the neglect of friends. May we suggest that the defaulters he refers to are those "whose poverty and not their will consents," and who afford a lamentable proof of the fallen fortunes of the Profession.—Ed.]

#### STAMP ON AGREEMENT.

A. agrees to let a concert-room to B. for one night per week for 18 weeks, at a rental of 5s. per week, and they accordingly sign a memorandum of agreement. Is such agreement liable to any, and, if any, what, stamp duty? My own impression is that it is not liable, but the Stamp Acts appear very vague on this point, and several friends to whom I have spoken on the subject have all differed in opinion. If I read the Act correctly, an agreement under hand only is not liable to duty unless the subject matter thereof is "of the value of 20s. or upwards."

Would any of your readers kindly enlighten me, and thereby remove the possibility of mistake?

Lex.

#### NOTES OF THE CIRCUIT.

##### NON-ATTENDANCE OF GRAND JURORS.

Mr. Justice Coleridge, who presided at Bodmin in the Crown Court, in his charge to the grand jury, expressed his regret and disappointment at meeting so small and insufficient a number. When he saw that so large a number as 105 gentlemen had been summoned, and only 15 had thought it proper to appear, it was impossible not to suppose that there must be a very great number who were absent wilfully, and, at all events, without any just excuse. He hoped that it would not be found that there was an opinion among them that the discharge of these duties was unimportant and might be rejected, and that the whole institution of the grand jury might be done away with.

He did not intend to say one word in its favour or disfavour, further than expressing his belief, after some experience and a good deal of consideration, that it was one among the many institutions of this country which contributed altogether to the formation of the character of the English country gentleman, and which placed him immeasurably above people in the same situation in any other country in the world, as it was also one among the institutions which made it the duty of country gentlemen to acquaint themselves with the laws of the country, interested them in the discharge of the administration of the law, and

furnished them with manly and useful employment of their time. No man was at liberty to absolve himself from strict obedience to the law in speculations about its wisdom, so long as it remained the law it was his duty to obey it, and the higher his station was and the more widely his example was spread, the more it was his duty, for the goodness of his own example would operate upon the minds of those beneath him, and prevent them from entertaining the idea that the law might be disregarded with impunity.

He was unwilling to proceed against the absentees by fining them heavily. He presumed there might be some grounds of explanation or excuse, but they must feel that, if there were a similar laxity in the attendance of common jurors, he should be placed in a difficult position in fining them. He wished county gentlemen would consider this—how it was that the law with regard to juries was discharged; all were interested in the administration of justice, and every one of the county gentlemen might have to sit and discharge his duty as a petty juror in this as well as on the other side of the Court. They knew that those who performed those duties were small farmers and tradesmen, they attended at great personal inconvenience and were put to an expense they could very ill afford, and that without receiving the slightest remuneration, while the county gentleman, when he went into the box as a special juror, received considerable remuneration for a single cause, and he was saved, not by the letter or the spirit, or the correct interpretation of the Statute of the 6 Geo. 4, but by a practice which had grown up, from bearing the heat and burden of the day in the discharge of the duty of jurymen, while anything reserved was the honorary distinction of sitting as grand jurors, and it was a little hard to find the county gentlemen remiss in these duties.

#### CHARACTER OF THE LATE LORD LANGDALE.

"THE life of Lord Langdale is the life of a man who never threw a legitimate opportunity away, and never condescended to avail himself of one that was unlawful. What he had to do at any period of his career was done with his whole heart and soul—was well done, conscientiously, and therefore to his own satisfaction, as well as to the lookers-on. If failure should result from his labours, self-reproach could not afflict him, for he had tried his best. If he should find reward, the same exertions which had won the prize were still ready to be put forward, in order to retain and prove deserving of it. The memoirs of men who 'have thrown their chances away,' would constitute a painful but a memorable volume for the world's instruction. The story of a man who made the utmost of his resources is equally interesting and far more valuable."

"In April, 1808, he entered himself as student of the Inner Temple. He had wrought

diligently in Edinburgh when his father had intended him for the surgery at Kirby Lonsdale; he had not lost an hour at Cambridge when he was intent upon the studies of the university; his devotion was as marked as a student of the law. His letters at this period indicate how little the prospect of future success had to do with the duty, ever present to his mind, of constant perseverance. He knows that it is incumbent on all men to work, but the sure hope of ultimate reward never bribes him to labour. 'I rarely miss a day,' he writes to his father, 'going to see Mr. Bell, who is very communicative when I catch him alone and disengaged, which is not often, for he has much more business than he can possibly get through. . . . Everybody says to me, "You are certain of success in the end—only persevere;" and though I don't well understand how this is to happen, I try to believe it as much as I can, and I shall not fail to do everything in my power.'

"In 1811 Bickersteth was called to the Bar. He was 28 years of age, and every step in life had yet to be made. His means were straitened, and he depended for subsistence upon the contributions of his friends. He still works on. 'My whole time,' he writes to his parents at this juncture, 'will be passed either in chambers or court, and if being always in the way and always attentive to my business will give me success, I shall be successful.' He offers at the same time apologies for causing his father expense on his account, and sends home the unnecessary assurance that 'in clothes and living' he has been 'as economical as he could, consistently with keeping up a decent appearance.' A year or two elapse and business does not flow in. But the student is more indefatigable than ever, struggles, endures privation, denies himself every recreation that can at all interfere with the severe rule he has laid down for his self-government, and waits calmly for the issue. Temptations, sublimely overcome, are not confined to the priestly cell. In every epistle homeward the steadfast man 'confesses that he hardly knows how he shall be able to struggle on till he has had fair time and opportunity to establish himself;' but he still strives, and as fixedly and resolutely pursues his way, as though he saw the reward of all his pains awaiting him at the goal.

"In 1814, and when Henry Bickersteth had reached his thirty-first year, the worker was still under the dark cloud, and success had yet to be achieved. In that year the barrister writes home that 'it distresses him more than he can express to write again for assistance,' and that he is content, if his father so wills it, 'to give the matter up without delay, and return to Cambridge, where he is sure of support and some profit.' He will do anything but fall back on the Profession he abhors. 'After the discipline I have undergone,' he says, 'it will be a very slight mortification to me to give up my professional expectations for the smallest certainty which will enable me to

live, and in time repay you the large money debt I have contracted. If, therefore, you think that I cannot, or ought not, to continue my trial here for a few years longer, I will cheerfully abandon it and return to Cambridge, where I certainly shall be no expense to you.' The answer from home was a remittance of 30*l.*, and an intimation to go on.

"A few months afterwards business had slowly advanced; so much so that the student was 'almost content to be shut up among his books for ever.' A year or two more, and the cloud is burst—the struggler is emancipated—sunshine is before him—fortune is secured. Can the life of Henry Bickersteth, if it tell no more than this, be written in vain?"

"Lord Langdale was not a genius. He was not a great lawyer; but his was an accomplished mind, and both at the Bar and on the Bench he had remarkable skill in lucidly stating complicated facts. His general character partook of the nature of his intellect. There was nothing brilliant or startling in his career, but much that was noble, manly, and worthy of imitation. What he once said in the House of Lords with reference to his office,—viz., 'that long habit had attached even his affections to the discharge of his duties in the place in which he now was,' might be said with truth of his whole life. 'The discharge of his duties' was at all times a labour of love to him. It was the result of his self-government and the cause of his success. It is stated that Shakespeare and the Italian poets were the constant companions of his hours of relaxation, but imagination and sensibility did certainly not enter largely into his composition. His mind was essentially calm, cold, analytical, and judicial. In boyhood he wrote to his dearest friends often with the formality of a stranger, and discussed topics with a fellow-student in the tone and spirit of a pedant. His biographer dwells frequently on 'the true dignity' of his departed master. No doubt dignity was there; but it did not always fit its owner gracefully, like a garment that yields to the natural movements of the wearer. Occasionally the folds were stiff, unbending, and looked angular to the observer's eye. The same remark applies to a Spartan virtue, which the biographer very properly extols, but which may, nevertheless, be, and certainly was in Lord Langdale's case, carried to a vicious extent. Excessive nepotism is a fault, but we have yet to learn that a studied neglect of the claims of kindred and dependants is to be held up as a virtue. A gentleman was once pressed upon Lord Langdale, for an appointment, by two of the Vice-Chancellors; his qualifications were admitted, 'but his chance was small,' proudly adds the writer, 'for he was a connexion of Lord Langdale by marriage.' It is a fact, that Lord Langdale only assented to this appointment at last, because no fitter person could be thought of. A more unpardonable instance was, that of his lordship's secretary, for whom, upon his own retirement, Lord Langdale re-

fused to ask for a place, although a single word from his lips would have secured it, and, notwithstanding, it was well known to Lord Langdale that the secretary had some time before given up everything, in order that he might devote himself entirely to the interests of his over-sensitive master. In truth, if we dare hazard the expression, Lord Langdale was too scrupulously good, and a dash of human infirmity would have given interest to his proceedings—would have constituted in fact 'the river a cascade on the cultivated plain,' which were wanting to give force to a character too

level to be thoroughly heroic. But heroism is of various kinds, and we must hesitate before we assert that it was not present in the man who fought so bravely and suffered so meekly, before he won his way to eminence,—who, when eminent, was remarkable for his fine sense of honour, his love of truth, his assertion of right and justice, and who laboured with every faculty he could command—and that not unsuccessfully, to reform the Court of Chancery, and to preserve to the nation its valuable and long-neglected records."—From the *Second Series of Essays from "The Times."*

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lords Justices.

*Newbury v. Benson.* July 13, 1854.

#### EQUITY JURISDICTION IMPROVEMENT ACT. —ACCOUNT-BOOKS.—EVIDENCE.

*On taking accounts in a suit against an executor, the Chief Clerk had received in evidence certain books of account kept by him of receipts and payments, without an order for the purpose, under the 15 & 16 Vict. c. 86, s. 54. The Master of the Rolls had dismissed with costs, a motion to vary the certificate, but the ground of the want of such order was not raised: an appeal from the decision of the Master of the Rolls was, under such circumstances, dismissed without costs.*

THIS was an appeal from the decision of the Master of the Rolls refusing, with costs, a motion to vary the certificate of the Chief Clerk on taking the accounts in this suit as against the defendant, the executor of Mr. William Newbury. It appeared that the Chief Clerk had received in evidence certain books of account kept by the defendant of receipts and payments, without an order having been obtained under the 15 & 16 Vict. c. 86, s. 54, which enacts, that "it shall be lawful for the Court, in any case where any account is required to be taken, to give such special directions, if any, as it may think fit with respect to the mode in which the account should be taken or vouched, and such special directions may be given, either by the decree or order directing such account, or by any subsequent order or orders, upon its appearing to the Court that the circumstances of the case are such as to require such special directions; and particularly it shall be lawful for the Court, in cases where it shall think fit so to do, to direct that in taking the account the books of account, in which the accounts required to be taken have been kept, or any of them, shall be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they be advised." The objection as to the want of such order had, however, not been raised in the Court below.

*Willcock and H. Fox Bristowe* in support; *Bagshawe*, contra.

The Lords Justices said, that the appeal would be dismissed, but, under the circumstances, without costs.

### Master of the Rolls.

*Digby v. Jackson.* July 5, 1854.

#### HUSBAND AND WIFE.—COVENANT IN DEED OF SEPARATION BY WIFE FOR ALLOW- ANCE TO HUSBAND.

*In a deed of separation it was agreed that the husband should retain for his own use his half-pay as an admiral, and should receive 50l. a year out of an annual allowance from the Court of Chancery for the maintenance of his children: Held, that the wife, as a married woman, and having no separate estate, could not enter into such covenant for the payment of the 50l., and that the husband could not on her death recover the same which had not been paid.*

IT appeared that upon the separation of the plaintiff and Mrs. Digby in 1836, a deed of separation was entered into, under which the defendant was trustee, whereby it was agreed that the plaintiff should retain his half-pay as an admiral for his own use, and should receive a sum of 50l. a year out of the 450l. allowed by the Court of Chancery for the maintenance of their children. It appeared that the 50l. had not been paid, and on the youngest child coming of age in 1851 the allowance was stopped. The plaintiff now claimed the 50l. for the years 1836 to 1851 out of his wife's estate upon her death.

*Lloyd, R. Palmer, Nalder, and Horsey* for the several parties.

The Master of the Rolls said, that the plaintiff's wife, as a married woman, could not enter into the covenants in question, and had not besides any separate property upon which such covenants would operate. The bill must therefore be dismissed, with costs.

### Vice-Chancellor Kindersley.

*Ward v. Ward.* July 1, 1854.

#### TRUSTEES WITH POWER OF SALE.—SUIT FOR LEAVE TO MORTGAGE.—REFERENCE FOR ACCOUNTS.

*Real estate was devised in trust for the testator's two daughters for life, with remainder to their children, and with a direction for payment of debts and a power of sale. There was a mortgage on the property, and the trustees had raised a sum on their personal security for payment of debts. On a suit asking leave to raise the whole by mortgage, and for accounts, a reference was directed at Chambers in the first instance for an account.*

THE testator, by his will devised certain estates to the plaintiffs in trust for his two daughters for life, with remainder to their children, and directed the payment of his debts, giving a power of sale. It appeared that there was a mortgage of 1,900*l.* on the property, and that the plaintiffs had borrowed a sum of 3,000*l.* on their personal security, to pay the testator's debts, and they now filed this bill to obtain the sanction of the Court to raise 5,000*l.* on mortgage of the estates and for accounts. The *cestuis que trustent* consented.

Rogers for the plaintiffs; F. W. Clarke for the defendants.

The Vice-Chancellor said, that as the bill sought an account, the whole matter should be referred to Chambers, and the expediency of raising by mortgage would, upon the question again coming on, be determined.

#### Vice-Chancellor Wood.

Nash v. Hodgson. July 4, 1854.

PROMISSORY NOTES.—PAYMENT OF INTEREST.—APPROPRIATION TO PARTICULAR DEBT.—STATUTE OF LIMITATIONS.

*A testatrix, who was indebted to the plaintiff's wife in a promissory note for 200*l.* and on two other notes, had made a payment on account of interest, but without specifying in respect of which debt it was made: Held, that the plaintiff's wife was not entitled, without the assent of the testatrix, to appropriate such payment to any particular debt; and exceptions were therefore allowed to the Master's report overruling the defence set up of the Statute of Limitations, and the bill was dismissed.*

IT appeared that the testatrix had in 1841, with another person, given a joint and several promissory note for 200*l.* to the wife of the plaintiff, and that the executors now set up the Statute of Limitations. The Master, on a reference, reported that a payment in 1846, which was alleged to be by way of interest, had been made by the testatrix, but that at the time there were other sums due from her on other notes, and that the plaintiff's wife had endorsed the receipt on the note for 200*l.* as being for interest on that debt, without communicating with or having obtained the assent of the testatrix. The case now came

on upon exceptions to the Master finding that the note was not barred.

Willcock and Shebbeare, in support, referred to the 9 Geo. 4, c. 14, s. 1.

Rolt and Greene, contra.

The Vice-Chancellor said, that if there had been only one debt due, the payment must have been taken to be made in respect of that debt, but upon its appearing there were two or more debts, unless there were something beyond the mere payment, it was not an acknowledgment of one debt more than the other. The creditor had no more right to attribute the payment to one debt more than to the other, and the onus was on him to show in respect of which it had been made. He might allow it in account against whichever debt he pleased, but that could not prejudice the debtor, unless it were communicated to and assented to by her. The exceptions would therefore be allowed, and the bill be dismissed.

#### Crown Cases Reserved.

Regina v. Pratt. June 3, 1854.

INDICTMENT FOR STEALING GOODS.—ASSIGNMENT FOR BENEFIT OF CREDITORS.—BAILMENT.

*The defendant who, according to arrangement, remained on the premises to complete certain works, had removed goods which were included in an assignment for the benefit of his creditors, with the fraudulent intention of depriving the parties beneficially interested thereof, but the jury found that he was not in possession as agent for the trustees at the time of the removal: Held, that he could not be convicted of having stolen the same, as his possession was lawful, and the conviction was quashed.*

THIS was an indictment against the prisoner for having stolen certain property, which he had assigned over for the benefit of his creditors. It appeared that the prisoner carried on the business of a thimblemaker and manufacturer, and that it had been arranged he should be allowed to complete certain unfinished work, and he accordingly remained in possession for the purpose, and had availed himself of the opportunity to remove the property in question. On the trial before the Recorder of Birmingham, the jury found that the property was removed after the assignment, and with the fraudulent intent of depriving the parties beneficially interested under the deed, but that the prisoner was not at the time of such removal in the care and custody of the goods as agent for the trustees.

Bittleston and Field for the prisoner; A. Wills for the prosecutors.

The Court said, that as the finding of the jury clearly negatived a bailment, and the prisoner was in lawful possession of the goods, the conviction must be quashed.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

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SATURDAY, SEPTEMBER 9, 1854.
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### EXAMINATION OF ATTORNEYS AND SOLICITORS,

#### EDUCATIONAL AND PROPERLY QUALIFI- CATIONS.

In the Annual Report of the Incorporated Law Society, which we have recently been enabled to lay before our readers, the Council state that the proposed extension of the examination of Articled Clerks to subjects of Science and Literature has been often considered, and they have come to the conclusion that it is expedient, previously to the admission of candidates on the roll of Attorneys and Solicitors, that some examination should take place on points of *general* education, in addition to that now required upon *legal* attainments; and they think that such general education should comprise a competent knowledge of English History, Geography, Arithmetic, Book-keeping, and the Latin and French Languages.

These recommendations of the Incorporated Law Society appear to be reasonable and judicious. We are aware that several of the Provincial Law Societies have expressed an opinion in favour of a more extended course of study. Some of them include Mathematics, Greek, Logic, and Ethics in their plan of education. Whatever difference of opinion there may be regarding the tests to be ultimately established, it must be admitted that the suggestions of the Council of the Society, if adopted by the Judges, are calculated to insure a material improvement in the preparatory education of Attorneys and Solicitors.

It may be supposed, indeed, that the generality of our brethren have received an education that would qualify them to pass an examination in most, if not all, of the

branches of learning which the Council thus recommend. With rare exceptions, it may be assumed, that the candidates who now come up for their professional examination could also sufficiently answer questions in English History, Geography, and Arithmetic, and display a creditable knowledge of the Latin and French languages. Perhaps many of them may be deficient in the formal part of "book-keeping;" but even in ordinary private schools all the other subjects are sufficiently taught. It is essential, however, that the pupil should be stimulated not only to acquire, but to *retain* these essential branches of knowledge, and to prove, at the time of his admission into the Profession, that he has not forgotten but is proficient in them, at least, to a moderate extent.

We have heard it said, that it is an injurious reflection on the present race of Attorneys to predicate that they are not acquainted with, and that their future Articled Clerks will not be instructed in, these ordinary educational elements;—that we might as well require evidence of their capacity to "read, write, and cast accounts," as imagine that they are not conversant with the subjects now proposed as tests of a liberal education. If, however, these branches of learning have been adequately mastered, there can be no hardship in requiring some reasonable proof of the fact. From the indulgence and thoughtlessness of youth, the opportunities of acquiring knowledge are too often neglected, and it can be no degradation to a candidate to give evidence of his industry and application, and to prove his fitness for entering on the study of an arduous and learned Profession,—the complete knowledge of which demands the exercise of the highest powers of the mind.

Amongst other topics, in support of the proposed improvements, it has been urged by many provincial solicitors that the reduction of the stamp duty on articles of clerkship, will largely increase the number of clerks of an inferior class; and that as the *property* qualification has thus been reduced, the *educational* tests should be raised. It seems questionable whether this view of the case could be successfully urged in Parliament or before the public. The Chancellor of the Exchequer expressly avowed that he reduced the stamp from 120*l.* to 80*l.* in order to encourage a "freer competition," and in the present temper of the age there is little chance of continuing any system of restriction or monopoly. It is the pride of our free constitution that the humblest peasant or artisan may advance himself to the highest rank.

But whilst a pecuniary or property qualification cannot be maintained, we think that, for the good of the public, any measures for rendering the members of the Profession more *efficient* and *trustworthy* will be willingly supported, and there are strong reasons to believe that the Government is favourably disposed towards the improvement of the legal as well as other professions. It should be recollected that in the clerical and medical professions, scholastic attainments are required of a higher and more difficult kind than those proposed for the lawyer. The amount of education for the army and navy, and for various official and public employments, is now much greater than formerly; and therefore it behoves the attorney and solicitor, who has to carry the laws into effect,—who is the adviser of all classes of the community, from the highest to the lowest,—who is called upon to legalise (as it were) all the transactions of his clients,—to extricate them from their difficulties and embarrassments,—to assert and establish their rights, or defend them when unjustly attacked,—it becomes, we say, equally his duty and his interest to possess himself of all "the appliances and means" that may ensure success.

It is acknowledged, that in the early period of life, before entering on the special studies of the Law and its complicated modes of administration and practice, a broad and sure foundation should be laid for professional attainments and learning, by cultivating energetically the several intellectual faculties. At an early age, the exercise of the memory in the study and acquisition of languages is the fittest employment, and such study is then more

readily pursued than at a later period, when the reasoning powers are developed, and higher objects engross the attention and interest the feelings. Indeed, to pass creditably a classical and mathematical examination, demonstrates the possession of faculties that, if constantly exerted, will probably lead the possessor to that distinction of which there are many shining examples.

We have heard it urged, however, that admitting the advantages of a higher degree of education for a considerable class of attorneys, engaged chiefly for the nobility and gentry, it is unnecessary for the majority of our legion of Ten Thousand to possess more than an ordinary education;—that it may be safely left to clients to select legal advisers;—and that generally collegiate or classical attainments render young men less inclined to submit to the necessary drudgery which attaches to a large part of the business of an attorney. On this point it may be remarked, that the arrangements of the Profession do not allow of its division into different classes any more than clergymen or surgeons. If the practitioners in the County Courts, the Insolvent Courts, or other inferior departments of business, were separated from the Solicitors in Chancery and the other Superior Courts, different qualifications might be sufficient; but every attorney is entitled to practice in all the Courts, and it is impracticable to make any distinction in the mode of examination. Besides, independently of the business of the Courts, whether superior or inferior, there is the important department of Conveyancing, including the Law of Real Property, in which any practitioner may be engaged. We believe, also, that it is not the wish of any attorney to be placed in a lower grade of his Profession for the purpose of escaping an examination, but that he desires to hold an equal position with his brethren in general, and to be enabled, whenever the opportunity offers, of advancing himself from the humble practice in which he may at first be engaged, into a higher grade;—in like manner as a barrister who may commence his career at the Sessions, the Insolvent or Criminal Court, looks forward to the more dignified business of Westminster Hall.

It may not be inappropriate in this discussion, to notice that Dr. Whewell, in his Lecture on the material aids of Education, delivered on the 10th July, 1854, treating of general education, as distinguished from

Professional or technical education, describes "education as the process of making individual men participators in the best attainments of the human mind in general; namely, in that which is most rational, true, beautiful, and good."

"The way (he observes) in which the handicraftsman, the artisan, the artist,—even the *lawyer*, the physician, the sculptor, the painter, the architect,—learns his art, is a learning of a different kind from that which we call *general* education;—impelled by different motives, acquired in different schools, under different masters;—giving rise to a different train of reflections; bearing in a different manner upon the destinies of society."

"We most commonly (he continues) apply the notion of education rather to the young than to the adult; and therefore, I might have said, that education is the process of making *young* persons participators in the best attainments of the human mind. And undoubtedly it is highly desirable that a participation in such attainments should be conveyed to all young persons: and that this participation should *begin in youth*, is a rule which man's nature strongly recommends by the impulses and *facilities that are then in action*; and this the welfare both of the individual and of society urgently demands; and presses upon us those demands by most grave evils which result from their being disregarded. But yet the education of *adults*, whose education when young has been neglected, is a matter of no small interest, and of no light obligation; and in that case, the notion of education is still included in the same expression as before, that we are to make them participators in the best attainments of the human mind—in what is rational, true, beautiful, and good. And even if the education of a young person has been ever so carefully conducted, yet still when youth draws to an end, there may, there must, remain much to do; and the process, still understood in the same sense, may be prolonged into the season of *mature life*; and may be the more prolonged, the more fully that sense is affixed to the term."

Hence it is palpable that to make an accomplished lawyer, we should commence with a good system of general education, and carry it on sufficiently far, before entering on the special, technical, or professional education, which is designed to prepare the young man for the official duties of his important vocation. It is not unworthy of notice that for the most part the

clergy are more highly esteemed in Society than lawyers,—not merely for their holy calling, but from the necessity of their receiving a University education. So, also, medical men are considered to possess an eminent degree of scientific knowledge as well as classical attainments. We feel, therefore, that the time has arrived when our brethren in general must bestir themselves to keep pace with the other learned professions, and we think that the steps proposed by the Council of the Incorporated Law Society are entitled to the general approval of the Profession.

The report to which we have referred,<sup>1</sup> states that the Council have under their consideration several suggestions for carrying this object into effect. The details of those suggestions are not yet announced; and it is evident that the regulations for the efficient operation of the proposed improvements require much care and deliberation. Several questions naturally arise on the *modus operandi*:—For instance, it may be asked, —Who are to be the examiners in general education? When and where is the examination to take place? Is it to be held before entering into articles, or immediately before admission? It is supposed by some that the Masters of the Superior Courts and the Council of the Incorporated Law Society, who are the present examiners, will also conduct the literary and scientific examination; but this is by no means a necessary consequence of the alteration. The examination might be conducted by the masters of eminent public schools, or by professors at the universities or colleges; but graduates, of course, would not require any further examination. It may be questionable whether certificates of proficiency from the masters of private schools would be receivable, and yet it may be a hardship to compel all students to qualify themselves at a public school. However, if twelve months or less, will suffice to be "coached" or "crammed" for the legal examination, a similar process will probably succeed in the other requisite attainments, and therefore no great inconvenience can be sustained under the suggested improvements.

As to the *time* when the examination is to take place, the Council of the Law Society intimate their opinion that it should be previously to the admission on the Roll, not to the commencement of the articles. This seems at present to be the proper

<sup>1</sup> See p. 327, ante.



course, but hereafter a certain amount of classical and general learning may be required prior to entering on the contract of service. The place of examination will usually, we presume, be in London; but it would be seriously inconvenient to compel candidates from distant parts of the country to undergo the preliminary general examination, as well as the legal, in the metropolis. If the Legislature should deem it expedient to diminish the number of the Profession, a classical and mathematical examination in London by the professors of King's College, or University College, or the head masters of St. Paul's, Merchant Tailors', or other public schools, would probably effect the object; but this would be inconsistent with the "free competition" propounded by the Chancellor of the Exchequer.

If all property qualification were repealed,—not only the 80*l.* on the contract and 25*l.* on the admission, but the annual 9*l.* certificate tax (which is really a property qualification representing a capital of 180*l.*,<sup>2</sup>)—then the educational test might justly be increased, because the large sum now exacted by the State, might be applied in rendering the candidates more fit for the discharge of their duties to the public.

In our last Number we laid before our readers the prospectus issued by the Council of Legal Education of the Inns of Court. It has been remarked by several members of the Bar that the course of study required for the examination is much too extensive and severe, and not sufficiently useful and practical. Both the subjects of examination and the books on which the examination is founded, are considered to be too numerous and difficult, at all events at present. But to this objection it is answered that the examination is *voluntary*, and that a call to the Bar may take place after a sufficient attendance at lectures without an examination. This mode of proceeding, however, is evidently imperfect. Men of political influence may thus obtain the degree of barrister-at-law without any legal attainments, and carry away the prizes which ought to be reserved for the diligent student and accomplished lawyer.

<sup>2</sup> This supposes the capital only to be lent at 5 per cent., but as it is *sunk*, the amount ought to be doubled. Indeed, the present expense of the legal education and maintenance of an articled clerk is not less than 1,000*l.* This is surely "property qualification" enough.

These defects, however, will no doubt be remedied; and, after all, it may be remarked that though the course of study be severe, the examination may be comparatively lenient. In the other branch of the Profession, the mode of proceeding adopted, under the sanction of the Judges, has been different. The attendance at all or any of the several courses of lectures, delivered in the Hall of the Law Society, is *voluntary*; but the examination is *compulsory*, for none can be admitted in any of the Courts without a certificate from the examiners of the fitness and capacity of the candidate to act as an attorney and in the usual business transacted by attorneys.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts of the present Session printed in the present Volume, with an Analysis to each, will be found at the following pages:—

- Income Tax, cc. 17, 24, pp. 46, 134, *ante*
- Commons' Inclosure, c. 9, p. 64.
- County Court Extension, c. 16, 121.
- Registration of Bills of Sale, c. 36, p. 216.
- Warwick Assizes, c. 35, p. 218.
- Attendance of Witnesses, c. 34, p. 235.
- Evidence in Ecclesiastical Courts, c. 47, p. 254.
- Commons' Inclosure (No. 2), c. 48, p. 254.
- Cruelty to Animals, c. 60, p. 275.
- Ecclesiastical Jurisdiction, c. 65, p. 276.
- Highway Rates, c. 52, p. 276.
- Turnpike Trusts' Arrangements, c. 51, p. 276.
- Admiralty Court, c. 78, p. 295.
- Borough Rates, c. 71, p. 298.
- Acknowledgment of Deeds by Married Women, c. 75, p. 299.
- Stamp Duties, c. 83, p. 317.
- Court of Chancery, c. 100, p. 334.
- Bankruptcy, c. 119, p. 335.
- Real Estate Charges, c. 113, p. 339.

## COMMON LAW PROCEDURE ACT, 1854.

17 & 18 VICT. c. 125.

Judge may, by consent, try questions of fact; s. 1.

Two Judges may sit at same time for trial of causes pending in the same Court; s. 2.

Power to Court or Judge to direct arbitration before trial; s. 3.

Special case may be stated, and question of fact tried; s. 4.

Arbitrator may state special case; s. 5.

Power to Judge to direct arbitration at time of trial, when issues of fact left to his decision; s. 6.

Proceedings before and power of such arbitrator; s. 7.

Power to send back to arbitrator; s. 8.

Application to set aside the award; s. 9.

Enforcing of awards within period for setting them aside; s. 10.

If action commenced by one party after all have agreed to arbitration, Court or Judge may stay proceedings; s. 11.

On failure of parties or arbitrators, Judge may appoint single arbitrator or umpire; s. 12.

When reference is to two arbitrators and one party fail to appoint, other party may appoint arbitrator to act alone; s. 13.

Two arbitrators may appoint umpire; s. 14.

Award to be made in three months, unless parties or Court enlarge time; s. 15.

Rule to deliver possession of land pursuant to award to be enforced as a judgment in ejectment; s. 16.

Agreement or submission in writing may be made rule of Court, unless a contrary intention appear; s. 17.

Speeches to the jury; s. 18.

Power to adjourn trial; s. 19.

Affirmation instead of oath in certain cases; s. 20.

Persons making a false affirmation to be subject to the same punishment as for perjury; s. 21.

How far a party may discredit his own witness; s. 22.

Proof of contradictory statements of adverse witnesses; s. 23.

Cross-examination as to previous statements in writing; s. 24.

Proof of previous conviction of a witness may be given; s. 25.

Attesting witnesses need not be called except in certain cases; s. 26.

Comparison of disputed writing; s. 27.

Provision for stamping documents at the trial; s. 28.

Officer of the Court to receive the duty and penalty; 13 & 14 Vict. c. 97; s. 29.

No document under this Act to require a stamp; s. 30.

No new trial for ruling as to stamp; s. 31.

Error may be brought on a special case; s. 32.

Grounds to be stated in rule *nisi* for new trial; s. 33.

If rule *nisi* refused, party may appeal; s. 34.

Appeal upon rule discharged or absolute s. 35.

Courts of Error to be Courts of Appeal; s. 36.

Notice of appeal; s. 37.

Bail; s. 38.

Form of appeal; s. 39.

Rule *nisi* granted on appeal, how disposed of; s. 40.

Judgment Court of Appeal; s. 41.

Powers of Court of Appeal as to costs and otherwise; s. 42.

Error upon award of trial *de novo*; s. 43.

Payment of costs upon new trial on matter of fact; s. 44.

Affidavits on new matter; s. 45.

Power to Court or Judge to direct oral examinations of witnesses; s. 46.

Proceedings before and upon such examination; 1 Wm. 4, c. 22; s. 47.

Examination of person who refuses to make an affidavit; s. 48.

Proceedings upon order for examination; s. 49.

Discovery of documents; s. 50.

Power to deliver written interrogatories to opposite party; s. 51.

Affidavits by party proposing to interrogate, and his attorney; s. 52.

Oral Examination of parties, when to be allowed; s. 53.

Proceedings upon such rule or order; s. 54.

Depositions upon such examinations to be returned to Master's office; 1 Wm. 4, c. 22; s. 55.

Examiner may make special report to the Court; s. 56.

Costs of rule and examination to be in the discretion of the Court; s. 57.

Inspection by jury, of parties, or witnesses; s. 58.

Rule or order for summoning jury; s. 59.

Examination of judgment debtor as to debts due to him; s. 60.

Judge may order an attachment of debts; s. 61.

Order for attachment to bind debts; s. 62.

Proceedings to levy amount due from garnishee to judgment debtor; s. 63.

Judge may allow judgment creditor to sue garnishee; s. 64.

Garnishee discharged; s. 65.

Attachment book to be kept by the Masters of each Court; s. 66.

Costs of application; s. 67.

Action for mandamus to enforce the performance of duties; s. 68.

Declaration in action for mandamus; s. 69.

Proceedings upon claim for mandamus; s. 70.

Judgment and execution; s. 71.  
 Form of peremptory writ; s. 72.  
 Effect of writ of mandamus, and proceedings to enforce it; s. 73.

The Court may order the act to be done at the expense of the defendant; s. 74.

Prerogative writ of mandamus preserved; s. 75.

Proceedings for prerogative writ of mandamus accelerated; s. 76.

Proceedings on prerogative writ of mandamus; s. 77.

Specific delivery of chattels; s. 78.

Claim of writ of injunction; s. 79.

Form of writ of summons and endorsement thereon; s. 80.

Form of proceedings and of judgment; s. 81.

Writ of injunction may be applied for at any stage of the cause; s. 82.

Equitable defence may be pleaded; s. 83.

Equitable defence after judgment; s. 84.

Equitable replication; s. 85.

Court or Judge may strike out equitable plea or replication; s. 86.

Actions on lost instruments; s. 87.

Jurisdiction under Shipowners' Act; 53 Geo. 3, c. 159; s. 88.

False evidence; s. 89.

Execution to fix bail; s. 90.

*Scire facias* on judgment of assets *in futuro*; s. 91.

To compel continuance or abandonment of action in case of death; s. 92.

Claimant in second ejectment for same premises against same defendant may be ordered to give security for costs; s. 93.

As to writs of execution issued before 24th October, 1852; s. 94.

Courts may appoint sittings; s. 95.

Amendments; s. 96.

General rules may be made by the Judges; s. 97.

New forms of writs and other proceedings; s. 98.

Interpretation of terms; s. 99.

Provisions relating to Superior Courts to apply to Court of Common Pleas at Lancaster and Court of Pleas at Durham; s. 100.

Provisions as to Masters of Superior Courts to apply to prothonotaries of Palatinate Courts; s. 101.

Court of Queen's Bench to be the Court of Appeal from Palatinate Courts; s. 102.

Enactments in ss. 19 to 32 to apply to every Civil Court of Judicature in England and Ireland; s. 103.

Commencement of Act: 24 Oct., 1854; s. 104.

Her Majesty may direct all or part of

this Act to extend to any Court of Record s. 105:

Short title of Act; s. 106.

Act not to extend to Ireland or Scotland; s. 107.

The following are the title and sections of the Act:—

An Act for the further Amendment of the Process, Practice, and Mode of Pleading in and enlarging the jurisdiction of the Superior Courts of Common Law at Westminster, and of the Superior Courts of Common Law of the Counties Palatine of Lancaster and Durham. [12th August, 1854.]

Be it enacted as follows:—

1. The parties to any cause may, by consent in writing, signed by them or their attorneys, as the case may be, leave the decision of any issue of fact to the Court, provided that the Court, upon a rule to show cause, or a Judge on summons, shall, in their or his discretion, think fit to allow such trial; or provided the Judges of the Superior Courts of Law at Westminster shall, in pursuance of the power herein-after given to them, make any general rule or order dispensing with such allowance, either in all cases or in any particular class or classes of cases to be defined in such rule or order; and such issue of fact may thereupon be tried and determined, and damages assessed where necessary, in open Court, either in term or vacation, by any Judge who might otherwise have presided at the trial thereof by jury, either with or without the assistance of any other Judge or Judges of the same Court, or included in the same Commission at the assizes; and the verdict of such Judge or Judges shall be of the same effect as the verdict of a jury, save that it shall not be questioned upon the ground of being against the weight of evidence; and the proceedings upon and after such trial, as to the power of the Court or Judge, the evidence, and otherwise, shall be the same as in the case of trial by jury.

2. It shall be lawful for any one of the Judges of any of the Superior Courts at Westminster, at the request of the Lord Chief Justice or Lord Chief Baron, to try the causes entered for trial at *audi prius* in Westminster and London in either of the Courts, on the same days on which the said Lord Chief Justice or Lord Chief Baron, or any other Judge of the same Court, shall be sitting to try causes at those places respectively, or at either of them, so that the trial of two causes may be proceeded with at the same time; and all jurors, witnesses, and other persons who may have been summoned or required to attend at or for the trial of any cause before the said Lord Chief Justice or Lord Chief Baron, as the case may be, shall give their attendance at and for the trial thereof before such other Judge as may be sitting to try the same by virtue of this Act; and it shall be lawful for the associates and other officers of the Lord Chief Justice or

Lord Chief Baron, as the case may be, to appoint from time to time fit and proper persons, to be approved by the said Lord Chief Justice or Lord Chief Baron, to attend for them and on their behalf respectively before such Judge; and the trial of every cause which shall be so had by virtue of this Act shall, if necessary, be entered of record, as having been had before the Judge by whom such cause in fact was tried.

3. If it be made appear, at any time after the issuing of the writ, to the satisfaction of the Court or a Judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account which cannot conveniently be tried in the ordinary way, it shall be lawful for such Court or Judge, upon such application, if they or he think fit, to decide such matter in a summary manner, or to order that such matter, either wholly or in part, be referred to an arbitrator appointed by the parties, or to an officer of the Court, or, in country causes, to the Judge of any County Court, upon such terms as to costs and otherwise as such Court or Judge shall think reasonable; and the decision or order of such Court or Judge, or the award or certificate of such referee, shall be enforceable by the same process as the finding of a jury upon the matter referred.

4. If it shall appear to the Court or a Judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the Court, or upon a question of fact fit to be decided by a jury, or by a Judge upon the consent of both parties as hereinbefore provided, it shall be lawful for such Court or Judge to direct a case to be stated, or an issue or issues to be tried; and the decision of the Court upon such case, and the finding of the jury or Judge upon such issue or issues, shall be taken and acted upon by the arbitrator as conclusive.

5. It shall be lawful for the arbitrator upon any compulsory reference under this Act, or upon any reference by consent of parties where the submission is or may be made a rule or order of any of the Superior Courts of Law or Equity at Westminster, if he shall think fit, and if it is not provided to the contrary, to state his award, as to the whole or any part thereof, in the form of a special case for the opinion of the Court, and when an action is referred, judgment, if so ordered, may be entered according to the opinion of the Court.

6. If upon the trial of any issue of fact by a Judge under this Act it shall appear to the Judge that the questions arising thereon involve matter of account which cannot conveniently be tried before him, it shall be lawful for him, at his discretion, to order that such matter of account be referred to an arbitrator appointed by the parties, or to an officer of the Court, or, in country causes, to a Judge of any County Court, upon such terms as to costs, and otherwise, as such Judge shall think reasonable; and the award or certificate of such referee shall have the same effect as herein-

before provided as to the award or certificate of a referee before trial; and it shall be competent for the Judge to proceed to try and dispose of any other matters in question, not referred, in like manner as if no reference had been made.

7. The proceedings upon any such arbitration as aforesaid shall, except otherwise directed hereby or by the submission or document authorising the reference, be conducted in like manner, and subject to the same rules and enactments, as to the power of the arbitrator and of the Court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, and otherwise, as upon a reference made by consent under a rule of Court or Judge's order.

8. In any case where reference shall be made to arbitration as aforesaid, the Court or a Judge shall have power at any time, and from time to time, to remit the matters referred, or any or either of them, to the re-consideration and re-determination of the said arbitrator, upon such terms, as to costs and otherwise, as to the said Court or Judge may seem proper.

9. All applications to set aside any award made on a compulsory reference under this Act shall and may be made within the first seven days of the Term next following the publication of the award to the parties, whether made in Vacation or Term; and if no such application is made, or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, such award shall be final between the parties.

10. Any award made on a compulsory reference under this Act may, by authority of a Judge, on such terms as to him may seem reasonable, be enforced at any time after seven days from the time of publication, notwithstanding that the time for moving to set it aside has not elapsed.

11. Whenever the parties to any deed or instrument in writing to be hereafter made or executed, or any of them, shall agree that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing, or any person or persons claiming through or under him or them, shall nevertheless commence any action at law or suit in equity against the other party or parties, or any of them, or against any person or persons claiming through or under him or them in respect of the matters so agreed to be referred, or any of them, it shall be lawful for the Court in which action or suit is brought, or a Judge thereof, on application by the defendant or defendants, or any of them, after appearance and before plea or answer, upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration according to such agreement as aforesaid, and that the defendant was at the time of the bringing of such action or suit and still is ready and willing to join and concur in all Acts necessary and proper for causing such matters so to be decided by arbitration, to

make a rule or order staying all proceedings in such action or suit, on such terms as to costs and otherwise as to such Court or Judge may seem fit: provided always, that any such rule or order may at any time afterwards be discharged or varied as justice may require.

12. If in any case of arbitration the document authorising the reference provide that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator; or if any appointed arbitrator refuse to act, or become incapable of acting, or die, and the terms of such document do not show that it was intended that such vacancy should not be supplied, and the parties do not concur in appointing a new one; or if, where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, such parties or arbitrators do not appoint an umpire or third arbitrator; or if any appointed umpire or third arbitrator refuse to act, or become incapable of acting, or die, and the terms of the document authorising the reference do not show that it was intended that such a vacancy should not be supplied, and the parties or arbitrators respectively do not appoint a new one; then in every such instance any party may serve the remaining parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator respectively; and if within seven clear days after such notice shall have been served no arbitrator, umpire, or third arbitrator be appointed, it shall be lawful for any Judge of any of the Superior Courts of Law or Equity at Westminster, upon summons to be taken out by the party having served such notice as aforesaid, to appoint an arbitrator, umpire, or third arbitrator, as the case may be, and such arbitrator, umpire, and third arbitrator respectively shall have the like power to act in the reference and make an award as if he had been appointed by consent of all parties.

13. When the reference is or is intended to be to two arbitrators, one appointed by each party, it shall be lawful for either party, in the case of the death, refusal to act, or incapacity of any arbitrator appointed by him, to substitute a new arbitrator, unless the document authorising the reference show that it was intended that the vacancy should not be supplied; and if on such a reference one party fail to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party shall have appointed an arbitrator, and shall have served the party so failing to appoint with notice in writing to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole arbitrator in the reference, and an award made by him shall be binding on both parties as if the appointment had been by consent; provided, however, that the Court or a Judge may revoke such appointment, on such terms as shall seem just.

14. When the reference is to two arbitra-

tors, and the terms of the document authorising it do not show that it was intended that there should not be an umpire, or provide otherwise for the appointment of an umpire, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award, unless they be called upon by notice as aforesaid to make the appointment sooner.

15. The arbitrator acting under any such document or compulsory order of reference as aforesaid, or under any order referring the award back, shall make his award under his hand, and (unless such document or order respectively shall contain a different limit of time) within three months after he shall have been appointed, and shall have entered on the reference, or shall have been called upon to act by a notice in writing from any party, but the parties may by consent in writing enlarge the term for making the award; and it shall be lawful for the Superior Court of which such submission, document, or order is or may be made a rule or order, or for any Judge thereof, for good cause to be stated in the rule or order for enlargement, from time to time to enlarge the term for making the award; and if no period be stated for the enlargement in such consent or order for enlargement, it shall be deemed to be an enlargement for one month; and in any case where an umpire shall have been appointed it shall be lawful for him to enter on the reference in lieu of the arbitrators, if the latter shall have allowed their time or their extended time to expire without making an award, or shall have delivered to any party or to the umpire a notice in writing stating that they cannot agree.

16. When any award made on any such submission, document, or order of reference as aforesaid directs that possession of any lands or tenements capable of being the subject of an action of ejectment shall be delivered to any party, either forthwith or at any future time, or that any such party is entitled to the possession of any such lands or tenements, it shall be lawful for the Court of which the document authorising the reference is or is made a rule or order to order any party to the reference who shall be in possession of any such lands or tenements, or any person in possession of the same claiming under or put in possession by him since the making of the document authorising the reference, to deliver possession of the same to the party entitled thereto, pursuant to the award, and such rule or order to deliver possession shall have the effect of a judgment in ejectment against every such party or person named in it, and execution may issue, and possession shall be delivered by the sheriff as on a judgment in ejectment.

17. Every agreement or submission to arbitration by consent, whether by deed or instrument in writing, not under seal, may be made a rule of any one of the Superior Courts of Law or Equity at Westminster, on the appli-

cation of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should not be made a rule of Court; and if in any such agreement or submission it is provided that the same shall or may be made a rule of one in particular of such Superior Courts, it may be made a rule of that Court only; and if when there is no such provision a case be stated in the award for the opinion of one of the Superior Courts, and such Court be specified in the award, and the document authorising the reference have not, before the publication of the award to the parties, been made a rule of Court, such document may be made a rule only of the Court specified in the award; and when in any case the document authorising the reference is or has been made a rule or order of any one of such Superior Courts, no other of such Courts shall have any jurisdiction to entertain any motion respecting the arbitration or award.

18. Upon the trial of any cause the addresses to the jury shall be regulated as follows:—The party who begins, or his counsel, shall be allowed, in the event of his opponent not announcing at the close of the case of the party who begins his intention to adduce evidence, to address the jury a second time at the close of such case, for the purpose of summing up the evidence; and the party on the other side, or his counsel, shall be allowed to open the case, and also to sum up the evidence (if any); and the right to reply shall be the same as at present.

19. It shall be lawful for the Court or Judge, at the trial of any cause, where they or he may deem it right for the purposes of justice, to order an adjournment for such time, and subject to such terms and conditions as to costs, and otherwise, as they or he may think fit.

20. If any person called as a witness, or required or desiring to make an affidavit or deposition, shall refuse or be unwilling from alleged conscientious motives to be sworn, it shall be lawful for the Court or Judge or other presiding officer, or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, to permit such person, instead of being sworn, to make his or her solemn affirmation or declaration in the words following; *videlicet*,

“I, A. B., do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely, and truly affirm and declare, &c.”

Which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form.

21. If any person making such solemn affirmation or declaration shall wilfully, falsely, and corruptly affirm or declare any matter or thing, which, if the same had been sworn in the usual form, would have amounted to wilful and corrupt perjury, every such person so

offending shall incur the same penalties as by the Laws and Statutes of this kingdom are or may be enacted or provided against persons convicted of wilful and corrupt perjury.

22. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall in the opinion of the Judge prove adverse, contradict him by other evidence, or, by leave of the Judge, prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

23. If a witness, upon cross-examination as to a former statement made by him relative to the subject-matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

24. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject-matter of the cause without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him: Provided always, that it shall be competent for the Judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he shall think fit.

25. A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanor, and, upon being so questioned, if he either denies the fact, or refuses to answer, it shall be lawful for the opposite party to prove such conviction; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the clerk of the Court, or other officer having the custody of the records of the Court where the offender was convicted, or by the deputy of such clerk or officer (for which certificate a fee of 5s. and no more shall be demanded or taken), shall, upon proof of the identity of the person, be sufficient evidence of the said conviction, without proof of the signature or official character of the person appearing to have signed the same.

26. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite; and such instrument may be proved by admission, or

otherwise, as if there had been no attesting witness thereto.

27. Comparison of a disputed writing with any writing proved to the satisfaction of the Judge to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the Court and jury as evidence of the genuineness, or otherwise, of the writing in dispute.

28. Upon the production of any document as evidence at the trial of any cause, it shall be the duty of the officer of the Court whose duty it is to read such document to call the attention of the Judge to any omission or insufficiency of the stamp; and the document, if unstamped, or not sufficiently stamped, shall not be received in evidence until the whole or (as the case may be) the deficiency of the stamp duty, and the penalty required by Statute, together with the additional penalty of 1*l.* shall have been paid.

29. Such officer of the Court shall, upon payment to him of the whole or (as the case may be) of the deficiency of the stamp duty payable upon or in respect of such document, and of the penalty required by Statute, and of the additional penalty of 1*l.*, give a receipt for the amount of the duty or deficiency which the Judge shall determine to be payable, and also of the penalty, and thereupon such document shall be admissible in evidence, saving all just exceptions on other grounds; and an entry of the fact of such payment and of the amount thereof shall be made in a book kept by such officer; and such officer shall, at the end of each sittings or assizes (as the case may be), duly make a return to the Commissioners of the Inland Revenue of the moneys, if any, which he has so received by way of duty or penalty, distinguishing between such moneys, and stating the name of the cause and of the parties from whom he received such moneys, and the date, if any, and description of the document for the purpose of identifying the same; and he shall pay over the said monies to the Receiver-General of the Inland Revenue, or to such person as the said Commissioners shall appoint or authorise to receive the same; and in case such officer shall neglect or refuse to furnish such account, or to pay over any of the money so received by him as aforesaid, he shall be liable to be proceeded against in the manner directed by the eighth section of an Act passed in the session of Parliament holden in the 13 & 14 Vict. c. 97, intituled "An Act to repeal certain Stamp Duties, and to grant others in lieu thereof, and to amend the Laws relating to the Stamp Duties;" and the said Commissioners shall, upon request, and production of the receipt hereinbefore-mentioned, cause such documents to be stamped with the proper stamp or stamps in respect of the sums so paid as aforesaid: provided always, that the aforesaid enactment shall not extend to any document which cannot now be stamped after the execution thereof on payment of the duty and a penalty.

30. No document made or required under the provisions of this Act shall be liable to any stamp duty.

31. No new trial shall be granted by reason of the ruling of any Judge that the stamp upon any document was sufficient, or that the document does not require a stamp.

32. Error may be brought upon a judgment upon a special case in the same manner as upon a judgment upon a special verdict, unless the parties agree to the contrary; and the proceedings for bringing a special case before the Court of Error shall, as nearly as may be, be the same as in the case of a special verdict; and the Court of Error shall either affirm the judgment or give the same judgment as ought to have been given in the Court in which it was originally decided, the said Court of Error being required to draw any inferences of fact from the facts stated in such special case which the Court where it was originally decided ought to have drawn.

33. In every rule nisi for a new trial or to enter a verdict or nonsuit, the grounds upon which such rule shall have been granted shall be shortly stated therein.

34. In all cases of rules to enter a verdict or nonsuit upon a point reserved at the trial, if the rule to show cause be refused or granted and then discharged or made absolute, the party decided against may appeal.

35. In all cases of motions for a new trial upon the ground that the Judge has not ruled according to law, if the rule to show cause be refused, or if granted be then discharged or made absolute, the party decided against may appeal, provided any one of the Judges dissent from the rule being refused, or, when granted, being discharged or made absolute, as the case may be, or, provided the Court in its discretion think fit that an appeal should be allowed; provided, that where the application for a new trial is upon matter of discretion only, as on the ground that the verdict was against the weight of evidence or otherwise, no such appeal shall be allowed.

36. The Court of Error, the Exchequer Chamber, and the House of Lords shall be Courts of Appeal for the purposes of this Act.

37. No appeal shall be allowed unless notice thereof be given in writing to the opposite party or his attorney, and to one of the Masters of the Court, within four days after the decision complained of, or such further time as may be allowed by the Court or a Judge.

38. Notice of appeal shall be a stay of execution, provided bail to pay the sum recovered and costs, or to pay costs where the appellant was plaintiff below, be given, in like manner and to the same amount as bail in error, within eight days after the decision complained of, or before execution delivered to the sheriff.

39. The appeal hereinbefore mentioned shall be upon a case to be stated by the parties (and in case of difference, to be settled by the Court or a Judge of the Court appealed from), in which case shall be set forth so much of the

pleadings, evidence, and the ruling or judgment objected to, as may be necessary to raise the question for the decision of the Court of Appeal.

40. When the appeal is from the refusal of the Court below to grant a rule to show cause, and the Court of Appeal grant such rule, such rule shall be argued and disposed of in the Court of Appeal.

41. The Court of Appeal shall give such judgment as ought to have been given in the Court below; and all such further proceedings may be taken thereupon as if the judgment had been given by the Court in which the record originated.

42. The Court of Appeal shall have power to adjudge payment of costs, and to order restitution; and they shall have the same powers as the Court of Error in respect of awarding process and otherwise.

43. Upon an award of a trial *de novo* by any one of the Superior Courts or by the Court of Error, upon matter appearing upon the record, error may at once be brought; and if the judgment in such or any other case be affirmed in error, it shall be lawful for the Court of Error to adjudge costs to the defendant in error.

44. When a new trial is granted, on the ground that the verdict was against evidence, the costs of the first trial shall abide the event, unless the Court shall otherwise order.

45. Upon motions founded upon affidavits it shall be lawful for either party, with leave of the Court or a Judge, to make affidavits in answer to the affidavits of the opposite party, upon any new matter arising out of such affidavits, subject to all such rules as shall hereafter be made respecting such affidavits.

46. Upon the hearing of any motion or summons it shall be lawful for the Court or Judge, at their or his discretion, and upon such terms as they or he shall think reasonable, from time to time to order such documents as they or he may think fit to be produced, and such witnesses as they or he may think necessary to appear, and be examined *vidæ voce*, either before such Court or Judge, or before the Master, and upon hearing such evidence, or reading the report of such Master, to make such rule or order as may be just.

47. The Court or Judge may by such rule or order, or any subsequent rule or order, command the attendance of the witnesses named therein, for the purpose of being examined, or the production of any writings or other documents to be mentioned in such rule or order; and such rule or order shall be proceeded upon in the same manner, and shall have the same force and effect, as a rule of the Court under an Act passed in the 1 Wm. 4, c. 22, intituled "An Act to enable Courts of Law to order the Examination of Witnesses upon Interrogatories or otherwise;" and it shall be lawful for the Court, or Judge, or Master to adjourn the examination from time to time as occasion may require; and the proceedings upon such examination shall be con-

ducted, and the depositions taken down, as nearly as may be, in the mode now in use with respect to the *vidæ voce* examination of witnesses under the last-mentioned Act.

[To be continued.]

## EVIDENCE BEFORE THE BANKRUPTCY COMMISSIONERS.

ANSWERS OF THE COUNCIL OF THE INCORPORATED LAW SOCIETY OF THE UNITED KINGDOM.

1. THIS question does not express to what period it refers the diminution of business alluded to. The Council, however, understand it to refer to that which followed the establishment of the Court of Bankruptcy by the Act of 1 & 2 Wm. 4, c. 56, a diminution which they believe has continued to the present time.

Assuming this to be the period meant, the Council are of opinion that such diminution has been occasioned in a considerable degree by the now very extensive practice of resorting to deeds of composition and inspectorship and other private and amicable arrangements for the benefit of creditors, in lieu of resorting to a bankruptcy. This course has become more generally and frequently adopted during the last 15 or 20 years; and the commercial public now, as the Council believe, entertain the opinion, that (except under peculiar circumstances, as, for instance, where the debtor is unwilling to meet his creditors or is actuated by dishonest motives, or where a portion of his creditors, in opposition to the rest, refuse to concur in such amicable deed or arrangement), it is not desirable to adopt proceedings in bankruptcy.

The Council can state, from their own experience, that until lately so favourable an opinion was not entertained of the benefit of such deeds and arrangements as longer experience of their working, and of the quasi-validity given to them by recent enactments, has now fully shown they deserve. It is to be remembered that during the last 20 or 30 years, including within that period the 6 Geo. 4, c. 16, s. 4, and the 12 & 13 Vict. c. 106, s. 68, some important alterations in the law have been made with regard to such deeds by which they have acquired greater validity; and experience also has shown in what way such arrangements may be most effectually carried out.

The Council suggest that in any further Act complete validity should be given to deeds of this description.

They consider that the Court of Bankruptcy is not now so popular as it formerly was with the mercantile public; and that the alteration of the country system, by confining in effect the places for holding meetings in bankruptcy to seven or eight in England, instead of leaving it open to the Commissioners to meet at any town in the kingdom, has detracted much from the facility of resorting to the Bankruptcy Court, and has deterred country creditors



from resorting to the remedy of bankruptcy in cases in which they formerly issued commissions to be executed by Commissioners acting in their own town; and the inconvenience is not adequately obviated by the power given to send the registrar of the Court to distant places.

These and other causes have, as the Council believe, aided in driving creditors from the Bankruptcy Court, and that Court is now principally (and, as the Council consider, most properly), regarded as only to be called in aid when there are peculiar and complicated circumstances, or when there are unwilling or dishonest parties against whom an equitable division can only be enforced by the Bankruptcy Law.

2. The Council are of opinion that the insufficiency of the funds of the Court is likely to be permanent, unless its expenses are much diminished. If matters remain as at present, the same causes continuing, the same effects will be produced. They see no reason to expect that business will return to the Courts.

3, 4. Speaking only of the London Court, the Council are of opinion that very great reduction in the expense might be made. The business has at all times been insufficient to occupy the present judicial force and its staff of officers, and it is evidently gradually declining. The Commissioners might, in the opinion of the Council, be permanently reduced to two, and the registrars and other officers reduced proportionately; and if such Commissioners were required to sit every day, and for five or six hours each day, the Council think that not the slightest inconvenience would be felt from the reduction, but, on the contrary, that great benefit would ensue.

5. The Council are of opinion that it would often be a great advantage to the bankrupt's estate if the Commissioners acting in the prosecution of the bankruptcy were in attendance from day to day. It would prevent delay, or the necessity of calling in the aid of a Commissioner not acquainted with the bankruptcy in question.

6, 7. The Council consider that the number of country districts should be much increased, and of course the extent of each of them lessened. The present system, which comprehends only seven or eight Courts, is productive of great inconvenience and expense, and in several cases amounts to a denial of the benefits of the bankruptcy law.

8, 9. The Council consider that the present system affords the means for a sufficient check on the accounts of the official assignees, if properly carried out; but they think the registrars may have the duty cast upon them of examining the accounts, and ascertaining the balances of the official assignees; and every facility should be given to the examination of the accounts of the official assignees by the creditors before they are allowed.

10, 11. The Council consider that all the allowances to the official assignees should be brought into one common fund, and that there-

out there be paid, in the first instance, a fixed annual sum to each official assignee, which should cover expenses, and that the residue of such fund be divided among such official assignees in proportion to their respective receipts from the bankrupts' estates, and that the allowance of 20*l.* in each estate for examining the accounts should be abolished.

12. They have no suggestion to offer on the mode of appointing the official assignees.

13—15. The Council do not consider the classification of certificates of much importance, either as a punishment for past misconduct in the bankrupt, or an encouragement to him in future; but nevertheless they are not prepared to recommend that such classification should be abolished.

## LIFE ASSURANCE AGENTS.

We extract, for the information of our Readers the notes of Mr. *Bunyon*, the learned Author of "A Treatise upon the Law of Life Assurance," &c. (reviewed *ante*, p. 340), in reference to "Agents:"—

"In all the questions arising upon the acts of agents, it must be remembered that they are only binding upon the principal to the extent of the agency or the delegated authority (*Olding v. Smith*, 16 Jur. 497, Q. B.); and for any such act, the power may be either express or incidental to the office conferred.

"The employment of an agent in any particular capacity gives the necessary authorities to act under ordinary circumstances only. If an emergency occurs, an act of agency in excess of his authority is upon his own responsibility, and he must take the chance of the approval or disapproval of his principal (*Hawtayne v. Bourne*, 7 M. & W. 595). But if the principal afterwards adopts the act or contract of the agent, such a confirmation will operate from the time of the contract, and not only from the time at which it is given (*Bird v. Brown*, 14 Jur. 134, Exch.) An agent professing to act for a particular party cannot be sued as principal on the contract, although he may be answerable in damages (*Lewis v. Nicholson*, 16 Jur. 1041, Q. B.; *Jenkins v. Hutchinson*, 13 Q. B. 744); *aliter* if no principal be disclosed, and the agent, in fact, takes the liability in the first instance upon himself (*Carr v. Jackson*, 21 L. J. Ex. 137).

"The power of a general agent for a mercantile company must be ascertained by the usage of trade; and the mode of transacting business in that department in which he is employed will, in the absence of express directions, often determine a doubt as to the liability of the principal (*Chitty on Contracts*, §3). The principal officers of an insurance office, such as the managing director, secretary, or actuary, will fill the character of general agent, and possess all such powers as may be necessary for enabling them to conduct the business of their offices,

"The term agent, however, is commonly applied in practice to persons who are invested with a very limited authority, being employed in places distant from the principal seat of business to receive proposals for insurances, and collect the annual premiums of policies when issued.

"To such persons the general law respecting agents and their capacity for agency will apply. It is not necessary that they should be *sui juris*, and capable of contracting in their own right; but may be infants, married women, aliens, or otherwise under disabilities, if not physically incapacitated. They must closely follow the instructions of their principals, and by no means presume to exceed the limits of the delegated authority. They cannot bind the company so as to alter the conditions of any contract of insurance, or revive a lapsed policy without the express previous approval of the directors: and *a fortiori* cannot involve it in any fresh liability by pledging it to any new or additional insurance contract.

"Thus, in the case of *Deey v. Fernie*, 7 M. & W. 151, the renewal premium of a policy of insurance became due on the 15th of March, 1853, but was not paid until the 12th of April following, and the assured died on the 14th of the same month. It appeared that the following clause was printed at the bottom of the receipts: 'If this receipt is not taken up within 15 days from the day the premium becomes due, it must be returned to the office, as, after that period, the insurance being cancelled, the several receipts will be of no avail. (See conditions of insurance in the printed proposals of the company).' Instructions were given by the company to their agent that if any premium was not paid within the 15 days, he was to give immediate notice to the office; and in the event of his omitting to do so, his account would be debited for the amount after the 15 days were expired, and he would be held accountable for the same. No notice was given by the agent of the nonpayment of the premium, and, accordingly, he was debited with the amount, and it was entered in the office books as paid on the 15th of March. It was held that these entries were a mere private arrangement between the office and its agent to secure the due payment of monies received by him, and one of which a third party could not take advantage; and that there was no evidence of any new contract having been made, nor, in any sense, an authority in the agent to make a new contract; that the receipt itself proved that the agent had no authority, as such, to bind the company to a new contract upon the terms of the old one, but varying the time of payment; that, not being a general agent, but one with limited powers to receive premiums, he had authority to bind the company in respect of the money as if paid to the company itself, and hence it would seem that an agreement on his part to advance the money might be considered as payment on the day when it became due, but that he had no other power or right in the matter.

Neither are they empowered without express authority to receive notices of assignments on behalf of the company, which shall be binding upon it (*Gale v. Lewis*, 9 Q. B. 742; *Esporte Hennessey*, 1 Connor & Lawson, 55. See *Stewart v. Aberdeen*, 4 M. & W. 211).

"It is, above all things, the duty of an agent to keep regular accounts of all his transactions, and to pay over all monies received by him on behalf of his principal. Should he mix the moneys received by him on the agency account with his own, paying them to the same account with a banker, he must bear the loss of the failure of the latter (*Massey v. Banner*, 1 Jac. & W. 241), and may even become liable for interest on a balance, when improperly retained. Should he presume to speculate with the sums received, he will be liable to account for the profits; and such investments, even in stock, may be subject to a specific lien on the part of the principal (*Lord Chedworth v. Edwards*, 8 Hare, 48). He will not, however, be liable for unavoidable losses, as the failure of a banker in whose bills he may have made a remittance, or in whose hands, in the absence of directions, he may have deposited the money received to a separate account (*Massey v. Banner*, Sup.); or where he is robbed of the specific monies, whether the felony is committed in his house or upon his person; and in this respect the officer of a friendly society does not differ from any other bailee of specific monies under the Friendly Societies' Acts, 6 & 7 Wm. 4, c. 32, s. 84; 10 Geo. 4, c. 56, s. 20 (*Walker v. The British Guarantee Association*, 16 Jurist, 885, Q. B.).

"And, lastly, when an agent undertakes to obtain an insurance for a third party, he should execute the commission with diligence, for he may be liable to an action for neglecting to do so, and this is equally true whether the party undertaking the commission is an insurance agent or not, and although he may act gratuitously in the matter (*Wilkinson v. Coverdale*, 1 Esp. 74). Should he be unable to effect the policy, to prevent any right of complaint or liability attaching against himself, he should give notice of his inability to the intending assurer (*Callender v. Olericks*, 5 Bing. New Cases, 58; 6 Scott, 761). Should he be likely to succeed in effecting the insurance, it will be of importance that he should remember that, although he may be the agent of the society for the purpose of receiving and forwarding the proposal, yet at the same time, in acting for the party making it, to the extent of the delegated authority he is also his agent, and it is imperative upon him to attend to those rules respecting warranties and representations laid down in a previous chapter. Notwithstanding his official capacity, carelessness or mistake on his part may jeopardise the insurance (*Parsons v. Bignold*, 13 Sim. 518).

"The law officer or solicitor of the company is also its agent as regards the law business intrusted to him, but unless especially so appointed, he cannot be considered the general agent of the company, or even its agent in the

more limited sense of the term already considered (*Barnes v. Pennell*, 2 House of Lords' Cases, 497)."

## LAW OF COSTS.

### OF RECEIVER ON DECREE FOR DELIVERY UP OF DOCUMENTS.

A LAND agent and receiver, who had been discharged, was held liable to pay the costs of the suit, upon a decree for the delivery up of all documents relating to the estate and to its management.—*Lady Beresford v. Driver*, 16 Beav. 134.

### OF INJUNCTION ON SUPPRESSION OF MATERIAL FACT.

The plaintiff obtained an *ex parte* injunction, having, it appeared, omitted to state a material fact. On a motion to dissolve the injunction, the *Master of the Rolls* said—"It is clear that this injunction must be dissolved, with costs. If the circumstance of a party having forgotten a material fact were a sufficient excuse in this case, it would be so in every instance." *Clifton v. Robinson*, 16 Beav. 355.

## LAW OF EVIDENCE.

### IN PEDIGREE CASES.

IN the case of *Church v. Hooper*, 16 Beav. 182, the plaintiff claimed as representative of the next of kin of an intestate. On exceptions to the Master's report disallowing the claim, the *Master of the Rolls* said:—"The question I have had to consider is, whether there exists, in this case, a sufficient *prima facie* case, on the part of the plaintiff, to induce me to submit it to a further investigation. It is a trite but just remark, that if one link in a pedigree be assumed, any two persons may be proved to be related; and it is the usual observation, in these cases, that the difficulty consists in properly weighing and considering the evidence relating to some one link, which connects the line of the claimant with that of the intestate. \* \* \*

"It is a rule of evidence, in pedigree cases, that declarations *post litem motam* are not receivable in evidence. All this is evidence of declarations made before any question arose as to the succession to this property, but there is no trace that they were remembered or acted upon until after the contest had arisen. And

though no complaint can justly be urged against persons for not giving the evidence before the occasion requires it, yet it must always be borne in mind, in judging of evidence of this description, how extremely prone persons are to believe what they wish. And where persons are once persuaded of the truth of such a fact, as that a particular person was the uncle of their father, it is every day's experience that their imagination is apt to supply the evidence of that which they believe to be true. It is matter of frequent observation, that persons dwelling for a long time on facts, which they believe must have occurred, and trying to remember whether they did so or not, come at last to persuade themselves that they do actually recollect the occurrence of circumstances which, at first, they only begin by believing must have happened. What was originally the result of imagination becomes in time the result of recollection, and the judging of which and drawing just inferences from which is rendered much more difficult, by the circumstance that, in many cases, persons do really, by attentive and careful recollection, recal the memory of facts which had faded away, and were not, when first questioned, present to the mind of the witness. Thus it is, that a clue given or a note made at the time frequently recalls facts which had passed from the memory of the witness. I look, therefore, with great care and considerable jealousy on the evidence of witnesses of this description, even when I believe them to be sincere, and to be unable to derive any advantage from their testimony. \* \* \*

"It is also always necessary to remember, that in these cases, from the nature of the evidence given, it is not subject to any worldly sanction, it being obviously impossible, that any witness should be convicted of perjury for speaking of what he remembers to have been said in a conversation with a deceased person."

## POINTS IN EQUITY PRACTICE.

### WHERE NEXT FRIEND OF MARRIED WOMAN INSOLVENT AND IN CONTEMPT.

WHERE it appeared that the next friend of a *feme covert* plaintiff had admitted, both in writing and verbally, she was wholly insolvent, and was also in custody under an attachment for non-payment of costs, she was discharged from being next friend, but without prejudice to her liability to costs already incurred, and

all proceedings in the cause were ordered to be stayed until a new and sufficient next friend should have been named and appointed, or the plaintiff should have obtained liberty to proceed with her suit *in forma pauperis* without a next friend. *Willon v. Hill*, 2 De G. M'N. & G. 807.

#### APPOINTMENT OF GUARDIAN AD LITEM TO LUNATIC DEFENDANT.

*Held*, that an application for the appointment of a guardian *ad litem* to an infant defendant, who was a lunatic, but not so found by inquisition, ought not to be made under the jurisdiction in lunacy, but might be made to the Vice-Chancellor. *Pidcock v. Boulton*, 2 De G. M'N. & G. 898.

#### STAYING SUIT, WHERE FOREIGN DECREE.

Per Bruce, L. C. J.—“Before interference by this Court upon an interlocutory motion for the purpose of staying a suit, of which it is seised (if I may use the expression), by reason of a decree or judgment obtained in a foreign country, it ought to be well satisfied that the decree or judgment in the foreign country does justice, and covers the whole subject.” *Ostell v. Le Page*, 2 De G. M'N. & G. 892.

#### HOW TO GET ON AT THE BAR.

WE take advantage of the leisure of the Long Vacation to lay before our readers the lucubrations of “an experienced junior,” under the above attractive title, in the Number of *Fraser's Magazine* for September:—

“The Bar in England and Wales is now a very numerous Profession. Though outnumbered by the clergy, the attorneys, and the body of surgeon-apothecaries commonly called general practitioners, it nevertheless comprises within its ranks more than 4,000 members, and every term is adding to the number. The great majority of these counsel are young and inexperienced gentlemen, unpractised in the ways of the world, and unversed in the tricks of trade. They know nothing of the art of climbing into business, and fondly imagine that industry, attention, and average ability, alone and unaided, must speedily bring them into notice and full employment. How prevalent has been this mistake, hundreds of old, scores of middle-aged, and abundance of young men can testify. Year after year have these gentlemen been awaiting clients and income, and yet neither cash nor clients have come, in anything like the proportion expected by the learned gentlemen themselves, or by their too

hopeful relatives or friends. In some cases, no doubt, the unsuccessful suitors for Bar business are not calculated for the Profession: They have neither the natural nor the acquired talent necessary to obtain, much less to command success, and after a few trials this is discovered. But, on the other hand, there are many men unnoticed and unknown, who have the requisite qualities, and who from the want of the proper connexion—from a genuine independence and dignity of character—from the absence of a small independence—or who, from not possessing a seductive, attractive, and taking manner with attorneys, never get a fair start. The consequence is, that these gentlemen are distanced in the struggle for professional employment by competitors in no respect their superiors—by competitors often not their equals in natural or acquired ability, or legal learning. The great secret—the *moyen de parvenir*—in human life, can only be learned by long observation and minute attention to details, and the following suggestions are offered, as the result of experience, to the future and embryo barristers of England.

“1. As soon as any young man has taken steps to enter himself at the Temple or Lincoln's Inn, with a view to being called to the Bar, the first thing he should do is to get acquainted with as many attorneys as possible. If he be a pupil at the chambers of any eminent pleader or conveyancer, he may very soon learn from the clerk, or from his fellow-pupils, who have been longer in chambers than himself, the names of the chief clients and the firms to which they belong. This ascertained he may next feel his way as to the amount of their business, their position, social standing, &c. The next inquiry must be, is Mr. D., the senior partner of the firm of D., E., and F., married? and if so, whether he has among his family a daughter marriageable? In the event of this question being answered in the affirmative, the next inquiry may be as to whether the position of the house is such as to render a matrimonial alliance with a member of the firm an eligible spec. In a word, could a union with D.'s daughter be made to pay in a professional sense? The thing may be tested thus:—Could the firm of D., E., and F., always supposing a match to be effected, supply to a junior counsel business to the extent of 80*l.*, 100*l.*, or 200*l.* per annum, with a prospect of increase? In that contingency a marriage may be a most eligible *parti à prendre* for any young Erskine or Garrow that is to be, and the next step must be to scrape acquaintance, or get into the good graces of the attorney D. This may be effected through the medium of common friends—or failing that, the pupil may sedulously devote himself to any one or two of Mr. D.'s cases that are left at the pleader's chambers in which he is studying, getting up the law thereon, and applying it to the facts, or by drawing the pleadings with extraordinary neatness, accuracy, and care. The papers written on, and the pleadings drawn by the pupil, are taken in the

fulness of time into the pleader's room. The young gentleman tells his instructor that he has carefully got up the case and written upon it. If this be really done with any sort of credit, it is easy enough for the pupil to be present when the client comes for his papers, or to talk with him as to the case as the attorney passes out through the pupils' room. When this has happened three or four times in succession, the attorney is struck all at once with the industry and learning of the young student who is to be called in the ensuing term; he bethinks him how civil and attentive the gentleman has been, invites him to his house—asks him to dinner, &c., and, lo and behold, an acquaintance with Miss Wilhelmina is thus made. This is the middle of Hilary Term. In Easter Term Mr. Bubblestone is to be called, but before the ides of March the learned gentleman has made great progress in Wilhelmina's good graces.

"A marriage is fixed on by the middle of April, a week after which Bubblestone is to be called to the degree of barrister. Within a month after his union with the attorney's daughter, Bubblestone has opened the pleadings in three causes, in which *D.*, *E.*, and *F.* are the solicitors; has settled sundry declarations, has signed pleadings requiring counsel's hand, has written two opinions, has attended as counsel before an undersheriff, and has had a junior brief in a railway case before the House of Commons. In this manner, in his first term 30 guineas awaited him, and as Bubblestone will bear pushing, the sum has gone on increasing every term since. Within five years the learned gentleman may be in the receipt of any sum between 300*l.* and 800*l.*, or peradventure 1,000*l.* per annum. I do not mean to say that Bubblestone is not a person of more than average ability. He undoubtedly is so, being adroit, solid-headed, and moreover, worldly-minded almost to sordidness. But I do maintain, that had he not married the attorney's daughter, malgré all his craft, his receipts for the first year would not have exceeded what he netted the first term. There's his fellow pupil Jenkins, a far abler and more learned man. But Jenkins is without attorney connexion, and the consequence is, that he has not made as many half-crowns in the Profession as the other has made guineas. Marry, then, an attorney's daughter, an attorney's sister, an attorney's niece, or an attorney's mother, if you wish speedily to obtain an income enabling you to live.

"2. A suggestion full as important, perhaps more important, for the embryo barrister, is to resolve on becoming a member of the subordinate Profession before he dons the wig and gown in the superior one. It is a notorious fact, within the knowledge of every practising barrister, that on the eight circuits into which England and Wales are divided, there are, at least, 50 barristers who have been attorneys or attorneys' articulated clerks. None of these gentlemen are persons of any very stupendous attainments, or of any wonderful abilities, yet

it somehow or other happens that almost every one among them is making a decent income; while many of them are earning considerable annual gains. This it need scarcely be said, arises from these gentlemen having had a connexion and clientage in the Profession, and from bringing that clientage and connexion with them to the Bar. Let us put an example, we will suppose *A.*, a respectable and well-educated young gentleman, born among the middle and trading classes of the metropolis, to have entered an attorney's office in the year 1830, being then in his 16th year, as an articulated clerk. There were, say, three other articulated clerks in the office at the time—a conducting clerk, an admitted attorney, and three or four writing clerks. *A.* becomes a diligent student, pleases his master, and is admitted an attorney in 1835. His commercial relations are in a position to give him a certain amount of business, which he transacts with honour and credit. He goes on prosperously for four years, making progress every day. The articulated clerks who served their clerkships simultaneously with him, are practising country attorneys: one is settled at Bristol, the other at Liverpool, the third at Sheffield. Two of these fellow-clerks give him their London agency, the third cannot do so, having already given it to another, but promises otherwise to serve him.

"In 1839, *A.* has saved 1,400*l.*, and he straightway resolves to get called to the Bar. He disposes of his attorney's practice and goodwill for 400*l.* cash, and 100*l.* in a bill at two years' date. He is called to the Bar in 1843. His experience as articulated clerk and practising attorney has given him confidence and knowledge. He has not, it is evident, had papers in his hands for the first time. So soon as he is called, his old masters befriend him, and give him as much junior business as they can. The articulated clerks who were his chums, and to whom he acted as London agent, lend him a helping hand too. The conducting clerk where he was articulated is now in business on his own account. He befriends him also, not only with briefs, but with his counsel and advice, so that *A.* has an excellent start, and does the routine business intrusted to him far better than any mere tyro escaped from the university, with an additional six or twelve months in a pleader's office. Can it be wondered, then, that, *ceteris paribus*, the ex-attorney and old chum is preferred by the attorney client? There is a fellow-feeling between the parties; and the poet tells us that a 'fellow-feeling makes us wondrous kind.' It may be urged that few of the 50 attorneys, of whom *A.* is a fair average specimen, rise to the very highest walks in the Profession. Not one in a thousand, certainly, do so, but almost every one amongst them is in the receipt of incomes varying from 200*l.* to 1,200*l.* a year. And is this nothing at a time when there are hundreds of highly educated and accomplished men, ripe scholars and sound lawyers, who cannot make as much as pays the rent of their

chambers, far less their expenditure in travelling circuit? Few of the attorney class developed into barristers exceed incomes of 1,200*l.* or 1,500*l.* Now and again a very superior man of the class arises who makes his couple or three thousand, but these are the very rare exceptions to a rule almost general."

This is cleverly written, but vastly overstated. The supposed instances are few and far between. The most eminent men have succeeded without any affinity to attorneys.

## LEGAL ANTIQUITIES.

ON THE RELATIONSHIP BETWEEN RICHARD FITZ-JAMES, BISHOP OF LONDON, AND LORD CHIEF JUSTICE SIR JOHN FITZ-JAMES.

*By Edward Foss, Esq., F.S.A.*

IT too often happens among biographers and genealogists, that erroneous dates and lineages, given by the first writer, are adopted without inquiry by those who follow him. Generations are thus not unfrequently omitted in pedigrees, and members of a family, bearing the same Christian name, become confounded with each other. Puzzling as every one engaged in such investigations must have found this practice in private descents, errors of this description are magnified in importance, when they have reference to persons of note and position; involving as they must do the difficulty of connecting the real parties with the facts that relate to them.

As one of the great objects of this Society is to eradicate any misconception that may have crept into our national history, and to establish the truth where it can be found, I have thought that the members might feel some interest in the rectification of an error which almost universally prevails, with regard to the relationship that existed between two eminent individuals, dignitaries, one of the ecclesiastical, and the other of the judicial, bench in the reign of Henry VIII.

The first of these was Dr. Richard Fitz-James, successively Bishop of Rochester, Winchester, and London, whose name holds a prominent place in the archives of the University of Oxford, as a munificent benefactor to Merton College, over which he presided for nearly a quarter of a century. The other was Sir John Fitz-James, who, after holding for four years the office of Lord Chief Baron of the Exchequer jointly with that of a Puisne Judge of one of the other Courts (a practice of which there are frequent instances in those times), was raised to the post of Lord Chief Justice of England, and filled it for 13 years, during a period which comprehended the disgrace of Cardinal Wolsey, and the trials of Bishop Fisher and Sir Thomas More. How far he was implicated in those proceedings would be an inquiry foreign to my present object; but

that object is invested with a deeper interest, by the high and responsible position which he held, and the trying scenes in which it was his fortune to act.

The family of Fitz-James was a very ancient one. One of its members is named as early as the reign of Edward III.,<sup>1</sup> as possessing property in Somersetshire, the county in which we find the bishop's grandfather, James Fitz-James, was settled. That gentleman acquired the family estate of Redlynch by his marriage with Eleanor, daughter and heir of Simon Draycott; and his son, John Fitz-James, the bishop's father, married Alice, daughter of John Newburgh, of East Lullworth, in Dorsetshire, esquire.<sup>2</sup> As the Draycotts and Newburghs were second to none of the gentry of England in possessions and high blood, and as the Chief Justice's valuable estate of Redlynch had been in the family for at least two generations before him, I must acknowledge, that I cannot agree with Lord Campbell in calling him "of obscure birth;"<sup>3</sup> but should rather describe him as coming of honourable and opulent parentage and ancestry.

The received opinion with regard to the relationship between these clerical and legal personages is, that the Chief Justice was the elder brother of the bishop; and that both, together with a third, named Alured, or Aldred, were the children of John Fitz-James by his wife, Alice Newburgh. They are so described in all the authorities. Fuller calls this Alured, "Brother to this Judge, and to Richard, Bishop of London."<sup>4</sup> Anthony Wood says, that the bishop, "with his brother, Sir John Fitz-James, Lord Chief Justice of England, were the chief founders of the school-house in Bawton, in Somersetshire, near which town (at Redlynch, as 'tis said) they were both born."<sup>5</sup> Hutchins, in his History of Dorsetshire, describes the Chief Justice's father as Sir John Fitz-James, who by his wife Alice, the daughter of John Newburgh, of East Lullworth, Esq., "had Sir John (the Judge), Richard, Bishop of London, who died in 1521, and Aldred, the ancestor of the Lewston line."<sup>6</sup> And Chalmers repeats the description of Anthony Wood.<sup>7</sup>

In collecting the details for a memoir of the Chief Justice, it soon became apparent to me that all the preceding accounts were erroneous, and that Chief Justice Sir John Fitz-James, instead of being the bishop's elder brother, was his nephew. In the first place, there was no doubt about the date of the bishop's death. That event happened in January, 1521-2;

<sup>1</sup> Cal. Inquis. Post Mortem, vol. ii., p. 163.

<sup>2</sup> Wood's Athenæ Oxon. (1815), vol. ii., p. 720; Hutchins's Dorsetshire, vol. ii., p. 337.

<sup>3</sup> Lord Campbell's Chief Justices of England, vol. i., p. 160.

<sup>4</sup> Fuller's Worthies (1811), vol. ii., p. 283.

<sup>5</sup> Wood's Athenæ Oxon., vol. ii., p. 724.

<sup>6</sup> Hutchins's Dorsetshire, vol. ii., p. 337.

<sup>7</sup> Chalmers's Biograph. Dictionary.

when, according to Anthony Wood, he was "in a good old age." The same authority states that he became a student at Oxford in 1459. Presuming therefore that he could not then have been much younger than 14, his birth would have been placed about the year 1445. On his becoming Bishop of Rochester in 1496, he would thus be 51; on his being advanced to the Bishopric of Chichester in 1503, he would be 58; and on his translation to the see of London, two years afterwards, he would be 60. The age of 77 at his death in 1522 would thus well accord with the author's description.

If then the bishop was 77 in 1522, it is apparent that his elder brother must at that date have been 78 or 79 at the least, a period of life at which it can scarcely be supposed that any one would have been selected for the first time to fill a judicial position. Yet in that very year Sir John Fitz-James was raised from the rank of a Serjeant to that of a Judge of the King's Bench; and, if he were the elder brother of the bishop, he must have been 82 or 83 when he was advanced to the Chief Justiceship in 1526, and 95 or 96 when he resigned his office in 1539.

The extreme improbability of this led to further investigation. There is no doubt that John Fitz-James, the husband of Alice Newburgh and the father of the bishop, had an elder son named John. John the father died in 1476, in possession of Redlynch and other property in Somersetshire; and John Newburgh, the brother of Alice, by his will dated in 1485, leaves a legacy "to John Fitz-James, my nephew, son and heir of John-Fitz-James and Alice my sister."

This second John, clearly the bishop's elder brother, would, according to the previous calculations, be then about 42 years old. The bishop evidently survived him, for in his will, dated in 1518, he bequeathed to a third John, "John Fitz-James, senior, my nephew," a share in the residue of his goods.

This "John Fitz-James, senior, my nephew," was undoubtedly the future Judge. That he was called "senior," not only shows that John, the bishop's elder brother, was then dead, but also, as will be presently shown, that there was a fourth John then living.

The Chief Justice had a son named John—this fourth John—who died in the lifetime of his father, namely, in 1533; and by the Chief Justices' will, dated in 1538, it is apparent that he was then without male issue. He speaks only of daughters, and shows his anxiety to preserve his name in connexion with the family estate, by leaving Redlynch, under certain conditions, to his "cosyn," Nicholas Fitz-James and his heirs male, and, in default of them to the heirs male of his "cosyn" Alured. These were probably the sons of the bishop's younger brother Alured, and thus would be properly

described by the Chief Justice as his cousins, if he were, as now suggested, the Bishop's nephew; while, if he had been the bishop's brother, they must have been, and would have been described in his will as, his nephews.

The will of the Chief Justice exhibits further internal evidence to the same effect. In it he speaks of the bishop in a much more deferential manner than would be natural for him to do of a younger brother; but exactly as he might be expected to mention a dignified uncle. He bequeaths to various persons cups that he had "of my Lord Bishop;" and one of these cups, which he gives "to my cosyn Richard Blewett," he says, "my saide Lord of London bequeathed to my awnte, his [Blewett's] grandmother;" this aunt being no doubt the bishop's sister.

Some documents in the British Museum afford additional corroboration of the point I am advocating. Among the Harleian MSS. (99, p. 32), is a receipt dated 28th Nov., 8 Hen. VIII., 1516 (more than a year, therefore, before the date of the bishop's will), by "John Fitz-James, the elder, one of the executors of Thomas, late Erle Ormond, for 30*l*. rent of Sir William Walgrave, knt.;" and in the same collection (6989, p. 31) there is an autograph letter from the Chief Justice, in answer to an application from Thomas Cromwell to give to his nomination the place of Clerk of Assize. Both of these have the signature "John Fitz-James," obviously in the same handwriting. It is not mere resemblance, but actual identity; for the signature is peculiar and every stroke is the same. Thus the "John Fitz-James, senior, my nephew," in the bishop's will, the John Fitz-James, the elder, Lord Ormond's executor, and the Lord Chief Justice, are unquestionably brought into one.

Lastly, an examination of the records in the Prerogative Office affords such confirmation as to remove all remaining doubts. There is a will of John Fitz-James of Redlynch, proved in 1510, in which the bishop is mentioned as his brother, and a John Fitz-James as his son; and he makes them both his executors, together with his wife Isabell. These are the second and the third John. Next we have the will of Isabell the widow, which was proved in October, 1527. This is witnessed by "John Fitz-James the elder, Chief Justice of the King's Bench," who in his attestation calls the testatrix his mother-in-law, and by "Master John Fitz-James, the younger," being the fourth John. Lastly comes the will of this "Master John," in which he is described of Templecombe. It constitutes his father, the Chief Justice one of the overseers, and was proved in 1533, five years before the date of the Chief Justice's will, by his widow, Elizabeth. This Elizabeth is, no doubt, the person mentioned in the Chief Justice's will as his "daughter Elizabeth Fitz-James;" and her will was proved in 1551.

It seems to me, therefore, that the strictest critic cannot require stronger evidence to

\* Cal. Inquis. Post Mortem, vol. iv., p. 375.

† Testamenta Vetusta, p. 377.

‡ Testamenta Vetusta, p. 697.

prove the case; and that henceforth the old lineage will be discarded, and the Chief Justice be recognised as the nephew, instead of the brother, of Bishop Fitz-James; removing thus all difficulty with regard to his age in the different steps of his legal career.

Lord Campbell, in his *Life of the Chief Justice*, has not fallen into the mistake I have been noticing. Indeed, his lordship does not seem to have been aware that any relationship existed between the Judge and the Bishop, whether as brother or nephew. A knowledge of either connexion would no doubt have prevented him from ascribing obscurity of birth to the Chief Justice, as he would then have seen that Godwin distinctly speaks of the Bishop as *nobilis ortus prosepit*. This, however, is of minor importance; but there are some other statements in his lordship's memoir, from which I am unfortunate enough entirely to dissent. I of course refrain from discussing them here, feeling that the Society of Antiquaries is the last place into which such controversies should be introduced; and I only allude thus slightly to them now, lest my silence should be construed as precluding me from a future inquiry into their foundation.

I cannot conclude this short, and I fear somewhat uninteresting paper, without acknowledging my great obligation to two fellows of this body, both of whom afford excellent illustrations of the peculiar utility of a society like this; for, while they are industriously employed in their own pursuits, they are ever ready to give their aid in the investigations of their brethren: I mean Mr. Robert Cole—who has kindly supplied me with the later wills of the family—and Mr. David Jardine, to whom I am indebted for the discovery and the collation of the documents preserved among the Harleian MSS.—From the *Archæologia*, vol. xxxv. pp. 305—309.

## LEGAL MISCELLANEA.

### COMMON LAW OF ENGLAND.

WHEN it was discussed whether the Common Law of England should be that of the United States of America, the opinion of

Adams, Vice-President of the United States, was loudly called for. He rose and declared, if he had imagined that the Common Law had not by the Revolution become the law of the United States under the new Government, he never would have drawn his sword in the contest.—*Story's Life and Letters*.

Where is the Common Law of England now? J. J.

### STORY—TIDD.

Story began with a profound study of the Black Letter Law of England, and to the last, when gratefully summing the list of his instructors, he delighted to revert to Tidd. W.

### LAWYERS IN PARLIAMENT.

Mr. Justice Blackstone, in his *Commentaries* (i. 177), says, it was an unconstitutional prohibition, which was grounded upon an ordinance of the House of Lords (4 Inst. 10, 48, Pryn. Plea for Lords 370, 2 Whitelock, 359, 368), and inserted in the King's writs for the Parliament holden at Coventry, 6 Hen. 4. "that no apprentice or other man of the law should be elected a knight of the shire therein" (Pryn. on 4 Inst. 13), in return for which our law books and historians (Walsingham, A. D. 1405) have branded this Parliament with the name of *Parliamentum indoctum*, or the lack-learning Parliament; and Sir Edward Coke observes, with some spleen (4 Inst. 48), that there was never a good law made thereat.

## NOTES OF THE WEEK.

### LAW APPOINTMENTS.

James Jerwood, Esq., Barrister-at-Law, has been appointed Election Auditor, under the new Bribery Act, for the borough of Barnstaple.

Mr. Charles Augustin Smith, of Greenwich, one of the undersheriffs, has been appointed Election Auditor for the County of Middlesex, under the new Bribery Act.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Master of the Rolls.

*Bateman v. Marguerison.* June 30, 1854.

SUIT FOR ACCOUNT.—TRUSTEES UNDER COMPOSITION DEED.—COSTS.—AFFIDAVIT.

In a suit for an account against the trustees under a deed of composition with creditors, the plaintiff tendered upon the hearing on further directions and costs, an affidavit of his solicitor as to the proceedings in the Master's office, whereby it was alleged they had considerably increased the costs: Held,

that the affidavit could not be received, and an application was refused for the costs thereby occasioned.

In this suit for an account against the trustees under a deed of composition with creditors, it was alleged that the defendants had resisted the account, and had by their conduct in taking the same considerably increased the costs, and the plaintiff, on the case coming on for further directions and costs, now applied for the costs thereby occasioned.

Humphry, in support, upon an affidavit of the solicitor for the plaintiff, as to the proceedings in the Master's office.



The Master of the Rolls said, that the affidavit could not be received, and refused the application.

### Vice-Chancellor Kinderley.

*Dormer v. Phillips.* July 5, 1854.

CONSTRUCTION OF WILL.—PARTIES.—RESIDUARY LEGATEES.—EXECUTORS.

*In a case to which the executors were parties of great difficulty as to the construction of a will, the hearing was directed to stand over in order to make the residuary legatees parties.*

In this suit as to the construction of the will of the testator, Lord Dormer, upon the question whether the words "next heir" meant heir apparent or heir presumptive, an objection was taken that the residuary legatees were not before the Court.

*Gosse, Selwyn, and Cairns* for the plaintiff, the heir presumptive; *Bailey and Fleming* for the defendant, the heir apparent; *Grenne and Jackson* for the representative of the surviving executor.

The Vice-Chancellor said, that although executors represented their testator's estate, not only against third persons, but as against legatees, so that a decree would be binding on the latter although absent at the hearing, yet when a difficult question arose as to the construction of a will, the Court frequently called before it all the persons beneficially interested thereunder. The present question was extremely difficult, the case must stand over for the residuary legatees to be made parties.

### Vice-Chancellor Stuart.

*Wickham v. Garritt.* July 20, 1854.

SUIT BY BANKERS TO RECOVER FROM CLERK'S ESTATE MISAPPROPRIATED MONIES.—DEMURRER.

*It appeared that after the death of a clerk to bankers it was discovered he had misappropriated sums of money: Held, that they were entitled to proceed against his estate to recover the same, inasmuch as the rule that a person cannot be sued as on a civil action in respect of a transaction amounting to felony is one of public policy for the punishment of the offender, and does not come into operation where the felony is discovered after the death of the offender.*

THIS was a suit by the partners in the Winchester and Hampshire Bank for an account of what was due to them from the estate of the intestate, who was their managing clerk from 1838 to his death in May, 1854. It appeared that after his death it was discovered he had appropriated considerable sums of money belonging to the plaintiffs, and concealed the misappropriation by false entries in the books. There was a demurrer for want of equity.

*Elmsley and J. V. Prior* for the defendant, the legal personal representative; *Morins and J. Hinde Palmer* for the plaintiffs.

The Vice-Chancellor said, that the ground of the demurrer was that as far as the debt was created by misappropriation it was felony, and could not be made the ground of a suit. But the rule of law that a person cannot be sued as upon a civil action in respect of a transaction which amounts to a felony, is one of public policy, and is on the ground that the parties defrauded should do their duty to the public by prosecuting for the felony before proceeding in the civil Courts. When this public policy ceases to operate the rule ceases also: *Stone v. Marsh*, 6 B. & C. 562. In the present case the clerk died before the felony was discovered, and the rule of public policy had never therefore come into operation, as his prosecution for the felony was impossible. The demurrer would, therefore, be overruled with costs.

### Vice-Chancellor Black.

*Bleazard v. Whalley and others.* July 5, 1854.

TRUSTEES.—AUTHORITY TO REBUILD HOUSE UNDER POWER TO REPAIR IN WILL.

*A testator devised his estates and a house for certain life estates as therein mentioned, with power to the trustees to apply part of the income in keeping all the buildings in good repair, and to make such improvements by draining, walling, building, liming, or manuring the land, as they might think proper: Held, that the trustees were not authorized to rebuild the house which was in a dilapidated state at the tenant for life's death.*

THE testator by his will dated in September, 1841, devised his estates and a house at Blackburn, called Whiteholme, in trust as to one moiety for Mary Bleazard for life, with remainder to her issue, and as to the other moiety for the plaintiff for life, with remainder to her issue, and with ultimate remainders over as therein mentioned. The will contained a power to the trustees to apply part of the income in keeping all the buildings in good repair, and to make such improvements by draining, walling, building, liming, or manuring the land as they might think proper. At the testator's death, in 1846, it appeared that the house was out of repair, and it was proposed to lay out a sum of 1,500*l.*, to which the plaintiff objected, and ultimately, after some correspondence, the trustees pulled down part of the building which were stated to be in a dangerous condition, and rebuilt the same. This bill was filed against the trustees to carry out the trusts of the will, for an account, and for an indemnity if the rebuilding of the house were unauthorised by the trust.

*James and Southgate* for the plaintiff; *Roll and Pele* for the defendants.

The Vice-Chancellor said, that the testator had not intended the house to be rebuilt, but only kept in repair, and there must therefore be a reference for an account of what repairs were necessary, and what had been done.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

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SATURDAY, SEPTEMBER 16, 1854.
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### ARRANGEMENTS AND REGULATION OF SOLICITORS' OFFICES.

In the Office of Solicitors of very extensive practice, the arrangements for the methodical, convenient, and accurate despatch of business must necessarily be well considered and defined, in order to ensure prompt attention to each branch of business and prevent the waste of time and loss of labour which are the consequence of a deficient plan of action. Amongst the 3,000 attorneys of the metropolis, and the 7,000 of the provinces, no doubt there are many examples of skilful modes of transacting professional business, which, being the result of long experience, it would be difficult to surpass, and the advantages of which are daily felt and appreciated.

Having some acquaintance with the transaction of important business of various kinds, and being favoured with numerous hints from practitioners of long-trying experience, we propose to place before our readers an outline of such arrangements and regulations in a solicitor's office as may be useful to our brethren. And although it is not probable that any of the great firms, either in town or country, will alter, in any material degree, the course of business to which they have been accustomed, or vary plans which have been handed down, in some instances, for several ages, yet possibly the juniors of such establishments may take a hint from some of our suggestions; and at all events the members of new firms may be disposed to weigh and consider the recommendations we have to place before them, and which we can truly state to be founded on the result of a very large and successful practice.

We need describe, with brevity only, the nature and scope of a solicitor's practice to

show the necessity of the best possible arrangements for the despatch of business. In offices, whether large or small, there is usually a considerable variety of practice. There are suits in Equity and actions at Law relating to all kinds of subjects, too numerous to specify, and in some offices a hundred or more of these cases are in progress, with more or less speed and energy. Then there are transactions involving the whole Law of Real and Personal Property; comprising Marriage Settlements, Conveyances, Leases, Contracts of all kinds;—the execution of Trusts; the duties of Executors, Receivers, Consignees, Stewards, and Agents;—negotiations of various kinds for raising Loans, the formation of Partnerships, the management of Patents, and, in short, for all the affairs of a wealthy and busy community. Superadded to which are all those matters in which practical lawyers are required when men commit, or are subjected to, acts of folly or vice, fraud, or crime, and from the consequences of which they require to be extricated on the one hand or protected on the other.

Such are generally the avocations and duties of Attorneys and Solicitors, comprehending the whole range of English Law and practice. It is not so with the members of the Bar. There the useful principle of the "division of labour" largely prevails. There is an Equity Bar, a Common Law Bar, a Conveyancing Bar, a Bankruptcy Bar, a Criminal Law Bar, an Insolvent Court Bar;—besides the Bar at the numerous Quarter Sessions and occasionally in the County Courts. This multiplicity of a solicitor's occupation renders it consequently of the greater importance that ample and fitting regulations should be made for its despatch. In proportion as those regulations are well designed, and

strictly enforced, will be the speedy and satisfactory progress of the business to be transacted.

Let us now take a glance at the business of an office where there are three or more partners, each taking the head of one or more of the great branches of Practice, and each having a chief or a managing clerk, and a competent number of assistants and junior or copying clerks under him. In some offices there is a general managing clerk, or office manager, but usually there is a separate managing clerk in each department.

In an office of first-rate practice, both in extent and variety, it may be difficult, if not impracticable, for one mind to superintend and direct the business of all the respective departments. Though there may be and often is the power and capacity in the principal partner to master the whole scope of the business in progress, it may be physically impossible to find time and bestow the requisite attention on every occasion. Supposing the solicitor to commence his labours at nine in the morning and continue them till six in the evening, he cannot personally attend all the clients, many of whom are prolix in their communications and tedious in the explanations they require, nor can he peruse and consider the letters of numerous Correspondents and answer them, or superintend the answers prepared by his clerks. Then the incessant calls for immediate attention throughout the day, render it necessary that the preparation or settlement of Cases, Briefs, or Instructions for Counsel should be reserved for the evening. A division of labour therefore becomes unavoidable, and the question consequently is—how can this division be best effected? Where the firm is sufficiently strong in partners, the arrangement would of course be to apportion to one partner Conveyancing business;—to another Chancery;—and to a third Common Law. Bankruptcy might be assigned to such of the partners as convenient with reference to the due distribution of the labour.

In some offices, besides the division of business amongst the partners, one of them undertakes the superintendence of that essential part of the establishment, — its *Finances*. To this branch belongs the “settling” or revising draft bills of costs,<sup>1</sup> —their regular delivery and collection,—checking the account of moneys received

and paid,—ascertaining periodically the balances of accounts with the clients and the bankers, and the state of each partner's account. The laborious part of this section of business is usually confided to a cashier or clerk of accounts, whose duty it is to see that the items from which the bills of costs are prepared, are daily entered in the proper books, and to report to the head of the department any arrear or default in making those entries.

Care should be taken that none of the partners are overburthened. We have known several instances of men who in their zeal for their clients, and their capacity for and delight in the excitement attendant on important affairs, have broken down by over-exertion, neglecting those warnings which are always providentially given. The consequence is often an entire suspension of capacity for a long time, and occasionally the health is irrecoverably destroyed.

It is most desirable that each partner should specially charge himself with the business in a particular department, but this ought not to prevent the other partners from having a general knowledge of such business,—lest they should be inquired of by clients, who, if not properly answered, might impute to the office neglect or ignorance or inattention to their concerns.

But although each partner takes a particular department, it is essential that he take up and bestow his attention to business of a general description, and which may not fall under any particular class, otherwise, such business might not be attended to.

The propriety and necessity of periodical meetings of the partners to confer on any particular business and on their accounts, and to keep each other informed, are too manifest to be overlooked, as it has happened in some houses, that the partners do not hold sufficient communications, and consequently, each is unacquainted with the business in the care of the other.

A solicitor's business is chiefly surrounded with difficulties, and the reason for his being employed in general is, that he may by his skill, care, and management, penetrate and encounter and overcome the difficulties. Always then enter on a business with your mind prepared to find it full of complexities and difficulties, and with a perfect conviction that it will require all your energies of mind and body to overcome them. Thus will all difficulties vanish as if touched by a magical wand. But bear in mind that no

<sup>1</sup> Of course each partner should settle such parts of a client's bill as relate to the business under his personal management.

business will be done to your own or your client's satisfaction, unless you attack and prosecute it consecutively and with vigour, and with all your heart and soul until it be completed.

From these general observations, we proceed to some practical details for the conduct and despatch of business.

*Diaries.*—In the multiplicity of business it is almost impossible to preserve in the memory every matter that ought to be attended to, and every letter that should be answered, and hence the necessity for making daily entries of business *to be done*, and letters *to be answered* throughout the office. The name-book kept in the office, and the daily entries of business actually done, and the letters received, should be *constantly consulted and recollected*, and this, with a review of the cause lists and conveyancing and general business lists, will supply *materials* from day to day for fresh entries in the diary and for the useful employment of principals and clerks. Principals should not keep in their own minds what they wish to be done by the chief manager or heads of departments, or what they wish should be attended to, but should issue *written instructions* or directions, or insert them in the different diaries. Nevertheless, the non-issue or non-insertion of such instructions or directions is no excuse for the omissions of the heads of departments, who are specially answerable for the business in their charge.

*Letters* should, if possible, be answered as soon as they are received. We are acquainted with a solicitor, long retired from practice with a large fortune, who ascribed his success, from a very humble commencement, chiefly to his invariable habit of answering every letter, whether from clients, his professional brethren, or others, instantly if he could, or as speedily as possible.

*Immediate entries of business transacted.*—In the next place may be classed the necessity for the entry of charges for business done, and of cash received and paid, being fully, accurately and daily made and checked. Unless complete entries be regularly made, they will be forgotten, and all the exertions of principals and clerks will be unprofitable, and may be said to be *thrown away*, and consequently all pecuniary advantage to the principals is thereby sacrificed. Who then, whether principal or clerk, can be guilty of negligence in making his proper entries? It is hoped that no

one will, but that each will use his best endeavours to make the employment of his time productive of pecuniary as well as of professional advantage. Besides which, if entries are not *early* and fully made, the particulars of the business or attendance cannot accurately be stated, and it should be constantly borne in mind that the entries are the best records of what has taken place in any matter to which resort may always be made for information, and that without proper entries no bill can be properly made out. In making entries of business it often happens that much time is taken up in the selection, arrangement, and examination of papers, correspondence, and cases, as well as in the preparation of the required document, be it case, brief, pedigree, statement, or otherwise. The time then taken up is often far greater than the result will manifest, for the result may be compressed in a single sheet of paper. To do justice, then, to the client and principal, the time taken up not only in the cases before alluded to, but in attendances and in going to and in returning from those attendances, should be specified in the entry so that the accountant or clerk in making out the bill may be able to make a proper charge to the client accordingly. This observation cannot be too strongly pressed on the attention of principals and clerks, for "Time is property, and the chief capital and stock in trade of the Profession." Time, therefore, should be paid for when properly consumed for the benefit of the client.

We subjoin some advice and suggestions which have been prepared for the guidance of *Solicitors' Clerks* :—

In China there is a system or chain of responsibility, commencing with the emperor and ending with the peasant,—so that every succeeding rank or order is responsible to the rank or order above it. Thus every link in the chain of responsibility is preserved; and hence the fulfilment of the duty of every man in office is ensured. The junior clerks in the several departments of a solicitor's office should be responsible to those immediately above them, and the latter to the heads of departments,—the heads of departments should be responsible to the chief manager of the office,—the chief manager should be responsible to the junior principal,—and the junior principal to the senior principal.

The junior principal is therefore in a degree *responsible* for the chief manager,—the chief manager for the heads of de-

partments,—the heads of departments for their respective assistants,—and the assistants at their respective junior clerks.

Punctuality and regularity in the attendance of clerks are matters of the utmost importance to the discipline and character of the office; for unless clerks be at their posts at the *known* time of business, what reliance can be placed on them for the despatch of business should an emergency arise in their absence?

Liberality and kindness may always be anticipated, when occasional absence may be necessary, provided it be solicited; but, in return, attention to the usual hours of business should be uniformly observed.

It remains with the junior principal—with the chief manager—with the heads of departments—with their assistants, and with the junior clerks, to see that due attention is paid to the hours of attendance at the office for the sake of regularity and good order.

The character of an office much depends on the good conduct of the clerks. If they possess a real and true feeling for the honour and reputation, as well of the office as of themselves, their best abilities will be constantly exerted and cannot fail to command the respect and good opinion of their principals and their clients, and the Profession in general.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts of the present Session printed in the present Volume, with an Analysis to each, will be found at the following pages:—

- Income Tax, cc. 17, 24, pp. 46, 134, *ante*.
- Commons' Inclosure, c. 9, p. 64.
- County Court Extension, c. 16, 121.
- Registration of Bills of Sale, c. 36, p. 216.
- Warwick Assizes, c. 35, p. 218.
- Attendance of Witnesses, c. 34, p. 235.
- Evidence in Ecclesiastical Courts, c. 47, p. 254.
- Commons' Inclosure (No. 2), c. 48, p. 254.
- Cruelty to Animals, c. 60, p. 275.
- Ecclesiastical Jurisdiction, c. 65, p. 276.
- Highway Rates, c. 52, p. 276.
- Turnpike Trusts' Arrangements, c. 51, p. 276.
- Admiralty Court, c. 78, p. 295.
- Borough Rates, c. 71, p. 298.
- Acknowledgment of Deeds by Married Women, c. 75, p. 299.
- Stamp Duties, c. 83, p. 317.
- Court of Chancery, c. 100, p. 324.

Bankruptcy, c. 110, p. 335.

Real Estate Charges, c. 113, p. 339.

Common Law Procedure Act, 1854, c. 125, p. 356.

### COMMON LAW PROCEDURE ACT, 1854.

17 & 18 VICT. c. 125.

[Concluded from p. 363.]

48. Any party to any civil action or other civil proceeding in any of the Superior Courts, requiring the affidavit of a person who refuses to make an affidavit, may apply by summons for an order to such person to appear and be examined upon oath before a Judge or Master, to whom it may be most convenient to refer such examination, as to the matters concerning which he has refused to make an affidavit; and a Judge may, if he think fit, make such order for the attendance of such person before the person therein appointed to take such examination, for the purpose of being examined as aforesaid, and for the production of any writings or documents to be mentioned in such order, and may therein impose such terms as to such examination, and the costs of the application and proceedings thereon, as he shall think just.

49. Such order shall be proceeded upon in like manner as an order made under the hereinbefore-mentioned Act passed in the 1 Wm. 4, and the examination thereon shall be conducted, and the depositions taken down and returned, as nearly as may be, in the mode now used on *viva voce* examinations under the said Act of Parliament.

50. Upon the application of either party to any cause or other civil proceeding in any of the Superior Courts, upon an affidavit by such party of his belief that any document, to the production of which he is entitled for the purpose of discovery or otherwise, is in the possession or power of the opposite party, it shall be lawful for the Court or Judge to order that the party against whom such application is made, or if such party is a body corporate that some officer to be named of such body corporate, shall answer on affidavit, stating what documents he or they has or have in his or their possession or power relating to the matters in dispute, or what he knows as to the custody they or any of them are in, and whether he or they objects or object (and if so, on what grounds), to the production of such as are in his or their possession or power; and upon such affidavit being made the Court or Judge may make such further order thereon as shall be just.

51. In all causes in any of the Superior Courts, by order of the Court or a Judge, the plaintiff may, with the declaration, and the defendant may, with the plea, or either of them by leave of the Court or a Judge may, at any other time, deliver to the opposite party or his attorney (provided such party, if not a body corporate, would be liable to be called and examined as a witness upon such matter) inter-

rogatories in writing upon any matter as to which discovery may be sought, and require such party, or in the case of a body corporate any of the officers of such body corporate, within 10 days to answer the questions in writing by affidavit, to be sworn and filed in the ordinary way; and any party or officer omitting, without just cause, sufficiently to answer all questions as to which a discovery may be sought within the above time, or such extended time as the Court or a Judge shall allow, shall be deemed to have committed a contempt of the Court, and shall be liable to be proceeded against accordingly.

52. The application for such order shall be made upon an affidavit of the party proposing to interrogate, and his attorney or agent, or, in the case of a body corporate, of their attorney or agent, stating that the deponents or deponent believe or believes that the party proposing to interrogate, whether plaintiff or defendant, will derive material benefit in the cause from the discovery which he seeks, that there is a good cause of action or defence upon the merits, and, if the application be made on the part of the defendant, that the discovery is not sought for the purpose of delay; provided that where it shall happen, from unavoidable circumstances, that the plaintiff or defendant cannot join in such affidavit, the Court or Judge may, if they or he think fit, upon affidavit of such circumstances by which the party is prevented from so joining therein, allow and order that the interrogatories may be delivered without such affidavit.

53. In case of omission, without just cause, to answer sufficiently such written interrogatories, it shall be lawful for the Court or Judge, at their or his discretion, to direct an oral examination of the interrogated party, as to such points as they or he may direct, before a Judge or Master; and the Court or Judge may by such rule or order, or any subsequent rule or order, command the attendance of such party or parties before the person appointed to take such examination, for the purpose of being orally examined as aforesaid, or the production of any writings or other documents to be mentioned in such rule or order, and may impose therein such terms as to such examination, and the costs of the application, and of the proceedings thereon, and otherwise, as to such Court or Judge shall seem just.

54. Such rule or order shall have the same force and effect and may be proceeded upon in like manner, as an order made under the said hereinbefore-mentioned Act passed in the 1 Wm. 4.

55. Whenever, by virtue of this Act, an examination of any witness or witnesses has been taken before a Judge of one of the said Superior Courts, or before a Master, the depositions taken down by such examiner shall be returned to and kept in the Master's office of the Court in which the proceedings are pending; and office copies of such depositions may be given out, and the depositions may be otherwise used, in the same manner as in the case

of depositions taken under the hereinbefore-mentioned Act passed in the 1 Wm. 4, c. 22.

56. It shall be lawful for every Judge or Master named in any such rule or order as aforesaid for taking examinations under this Act, and he is hereby required to make, if need be, a special report to the Court in which such proceedings are pending, touching such examination, and the conduct or absence of any witness or other person thereon or relating thereto; and the Court is hereby authorised to institute such proceedings and make such order and orders upon such report as justice may require, and as may be instituted and made in any case of contempt of the Court.

57. The costs of every application for any rule or order to be made for the examination of witnesses by virtue of this Act, and of the rule or order and proceedings thereon, shall be in the discretion of the Court or Judge by whom such rule or order is made.

58. Either party shall be at liberty to apply to the Court or a Judge for a rule or order for the inspection by the jury, or by himself, or by his witnesses, of any real or personal property the inspection of which may be material to the proper determination of the question in dispute; and it shall be lawful for the Court, or a Judge, if they or he think fit, to make such rule or order, upon such terms as to costs and otherwise as such Court or Judge may direct: provided always, that nothing herein contained shall affect the provisions of the "Common Law Procedure Act, 1852," or any previous Act, as to obtaining a view by a jury: provided also, that all rules and regulations now in force and applicable to the proceedings by view under the said last-mentioned Act shall be held to apply to proceedings for inspection by a jury under the provisions of this Act, or as near thereto as may be.

59. The several Courts, or any Judge thereof, may make all such rules or orders upon the sheriff or other person as may be necessary, to procure the attendance of a special or common jury for the trial of any cause or matter depending in such Courts, at such time and place and in such manner as they or he may think fit.

60. It shall be lawful for any creditor who has obtained a judgment in any of the Superior Courts to apply to the Court or a Judge for a rule or order that the judgment debtor should be orally examined as to any and what debts are owing to him before a Master of the Court, or such other person as the Court or Judge shall appoint; and the Court or Judge may make such rule or order for the examination of such judgment debtor, and for the production of any books or documents, and the examination shall be conducted in the same manner as in the case of an oral examination of an opposite party before a Master under this Act.

61. It shall be lawful for a Judge, upon the *ex parte* application of such judgment creditor, either before or after such oral examination, and upon affidavit by himself or his attorney, stating that judgment has been recovered; and

that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, to order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Judge or a Master of the Court, as such Judge shall appoint, to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt.

62. Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the Judge shall direct, shall bind such debts in his hands.

63. If the garnishee does not forthwith pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the Judge may order execution to issue, and it may be sued forth accordingly, without any previous writ or process, to levy the amount due from such garnishee towards satisfaction of the judgment debt.

64. If the garnishee disputes his liability, the Judge, instead of making an order that execution shall issue, may order that the judgment creditor shall be at liberty to proceed against the garnishee by writ, calling upon him to show cause why there should not be execution against him for the alleged debt, or for the amount due to the judgment debtor, if less than the judgment debt, and for costs of suit; and the proceedings upon such suit shall be the same, as nearly as can be, as upon a writ of revivor issued under "The Common Law Procedure Act, 1852."

65. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the judgment debtor to the amount paid or levied, although such proceeding may be set aside or the judgment reversed.

66. In each of the Superior Courts there shall be kept at the Master's office a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and the mode of keeping such books shall be the same in all the Courts; and copies of any entries made therein may be taken by any person, upon application to any Master.

67. The costs of any application for an attachment of debt under this Act, and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or a Judge.

68. The plaintiff in any action in any of the Superior Courts, except replevin and ejectment,

may endorse upon the writ and copy to be served a notice that the plaintiff intends to claim a writ of mandamus, and the plaintiff may thereupon claim in the declaration, either together with any other demand which may now be enforced in such action, or separately, a writ of mandamus commanding the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested.

69. The declaration in such action shall set forth sufficient grounds upon which such claim is founded, and shall set forth that the plaintiff is personally interested therein, and that he sustains or may sustain damage by the nonperformance of such duty, and that performance thereof has been demanded by him, and refused or neglected.

70. The pleadings and other proceedings in any action in which a writ of mandamus is claimed shall be the same in all respects, as nearly as may be, and costs shall be recoverable by either party, as in an ordinary action for the recovery of damages.

71. In case judgment shall be given to the plaintiff that a mandamus do issue, it shall be lawful for the Court in which such judgment is given, if it shall see fit, besides issuing execution in the ordinary way for the costs and damages, also to issue a peremptory writ of mandamus to the defendant, commanding him forthwith to perform the duty to be enforced.

72. The writ need not recite the declaration or other proceedings, or the matter therein stated, but shall simply command the performance of the duty, and in other respects shall be in the form of an ordinary writ of execution, except that it shall be directed to the party and not to the sheriff, and may be issued in Term or Vacation, and returnable forthwith: and no return thereto, except that of compliance, shall be allowed, but time to return it may, upon sufficient grounds, be allowed by the Court or a Judge, either with or without terms.

73. The writ of mandamus so issued as aforesaid shall have the same force and effect as a peremptory writ of mandamus issued out of the Court of Queen's Bench, and in case of disobedience may be enforced by attachment.

74. The Court may, upon application by the plaintiff, besides or instead of proceeding against the disobedient party by attachment, direct that the act required to be done may be done by the plaintiff, or some other person appointed by the Court, at the expense of the defendant; and upon the act being done, the amount of such expense may be ascertained by the Court, either by writ of inquiry or reference to a Master, as the Court or a Judge may order; and the Court may order payment of the amount of such expenses and costs, and enforce payment thereof by execution.

75. Nothing herein contained shall take away the jurisdiction of the Court of Queen's Bench to grant writs of mandamus; nor shall any writ of mandamus issued out of that Court be invalid by reason of the right of the prosecutor to proceed by action for mandamus under this Act.

76. Upon application by motion for any writ of mandamus in the Court of Queen's Bench, the rule may in all cases be absolute in the first instance, if the Court shall think fit; and the writ may bear teste on the day of its issuing, and may be made returnable forthwith, whether in term or in vacation, but time may be allowed to return it, by the Court or a Judge, either with or without terms.

77. The provisions of "The Common Law Procedure Act, 1852," and of this Act, so far as they are applicable, shall apply to the pleadings and proceedings upon a prerogative writ of mandamus issued by the Court of Queen's Bench.

78. The Court or a Judge shall have power, if they or he see fit so to do, upon the application of the plaintiff in any action for the detention of any chattel, to order that execution shall issue for the return of the chattel detained, without giving the defendant the option of retaining such chattel upon paying the value assessed, and that if the said chattel cannot be found, and unless the Court or a Judge should otherwise order, the sheriff shall distrain the defendant by all his lands and chattels in the said sheriff's bailiwick, till the defendant render such chattel, or, at the option of the plaintiff, that he cause to be made of the defendant's goods the assessed value of such chattel; provided that the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods, the damages, costs, and interest in such action.

79. In all cases of breach of contract or other injury, where the party injured is entitled to maintain and has brought an action, he may, in like case and manner as herein-before provided with respect to mandamus, claim a writ of injunction against the repetition or continuance of such breach of contract or other injury, or the committal of any breach of contract or injury of a like kind, arising out of the same contract, or relating to the same property or right; and he may also in the same action include a claim for damages or other redress.

80. The writ of summons in such action shall be in the same form as the writ of summons in any personal action, but on every such writ and copy thereof there shall be endorsed a notice that in default of appearance the plaintiff may, besides proceeding to judgment and execution for damages and costs, apply for and obtain a writ of injunction.

81. The proceedings in such action shall be the same, as nearly as may be, and subject to the like control, as the proceedings in an action to obtain a mandamus under the provisions herein-before contained; and in such action judgment may be given that the writ of injunction do or do not issue, as justice may require; and in case of disobedience such writ of injunction may be enforced by attachment by the Court, or, when such Courts shall not be sitting, by a Judge.

82. It shall be lawful for the plaintiff at any time after the commencement of the action,

and whether before or after judgment, to apply *ex parte* to the Court or a Judge for a writ of injunction to restrain the defendant in such action from the repetition or continuance of the wrongful act or breach of contract complained of, or the committal of any breach of contract or injury of a like kind, arising out of the same contract, or relating to the same property or right; and such writ may be granted or denied by the Court or Judge upon such terms as to the duration of the writ, keeping an account, giving security, or otherwise, as to such Court or Judge shall seem reasonable and just, and in case of disobedience such writ may be enforced by attachment by the Court, or, when such Courts shall not be sitting, by a Judge: provided always, that any order for a writ of injunction made by a judge, or any writ issued by virtue thereof, may be discharged or varied or set aside by the Court, on application made thereto by any party dissatisfied with such order.

83. It shall be lawful for the defendant or plaintiff in replevin in any cause in any of the Superior Courts in which, if judgment were obtained, he would be entitled to relief against such judgment on equitable grounds, to plead the facts which entitle him to such relief by way of defence, and the said Courts are hereby empowered to receive such defence by way of plea; provided that such plea shall begin with the words "for defence on equitable grounds," or words to the like effect.

84. Any such matter which, if it arose before or during the time for pleading, would be an answer to the action by way of plea, may, if it arise after the lapse of the period during which it could be pleaded, be set up by way of *audita querela*.

85. The plaintiff may reply, in answer to any plea of the defendant, facts which avoid such plea upon equitable grounds; provided that such replication shall begin with the words "for replication on equitable grounds," or words to the like effect.

86. Provided always, that in case it shall appear to the Court, or any Judge thereof, that any such equitable plea or equitable replication cannot be dealt with by a Court of Law so as to do justice between the parties, it shall be lawful for such Court or Judge to order the same to be struck out on such terms as to costs and otherwise as to such Court or Judge may seem reasonable.

87. In case of any action founded upon a bill of exchange or other negotiable instrument, it shall be lawful for the Court or a Judge to order that the loss of such instrument shall not be set up, provided an indemnity is given, to the satisfaction of the Court or Judge, or a Master, against the claims of any other person upon such negotiable instrument.

88. The Superior Courts or any Judge thereof may, upon summary application, by rule or order, exercise such and the like jurisdiction as may, under the provisions of an Act of Parliament made and passed in the 53 Geo. 3, c. 159, intituled "An Act to Limit the Re-



rupt's estate, that all the forms should be gone through, whether required or not, but that the services of the Court might be resorted to if and when required. The confused and unsatisfactory mode in which the business of the Court is conducted; the dilatoriness of its proceedings, and the requiring creditors to attend in person and prove debts, about which there is no dispute, subject them to much unnecessary trouble and expense. We think that a regulation should be made that the debts of such creditors only which are disputed should be required to be proved. In order to vote at the choice of assignees, proof of the debt could not, perhaps, be avoided; but, after the assignees are chosen, they should determine what debts are to be admitted without proof, and which should be proved.

These causes operate to delay the declaration of a dividend, and, consequently, depreciate its value when made.

When creditors know they have made a bad debt, they always desire to have the matter speedily settled, that they may receive the dividend, know the extent of their loss, and expunge the matter from their books.

Many of these objections resolve themselves into this: that the system of the Court does not allow the suitors to resort to it for partial relief, but compels them either to avoid the Court altogether, or to commit to it the entire business of administering the insolvent estate. A similar evil was felt in the Court of Chancery, and has been recently provided for by the 15 & 16 Vict. c. 86, s. 56.

2. We think many of the evils arise from the present constitution and procedure of the Court; and we therefore think, that unless the Court and its procedure are remodelled, its inefficiency will continue.

3—5. We think that all meetings before the Commissioner, except for adjudication, choice of assignees, and certificate, should be abolished. They are a mere fiction and delay. No one does or can take any part in them except the assignees and solicitors; and therefore those meetings might be more usefully and more effectually held in the official assignee's office. This would include proof of debt, dividends, and audits; there being liberty to apply to the Commissioner on all disputed points as after mentioned.

That all applications to be made to the Commissioners should be set down beforehand in a list, and brought on in turn; the Commissioner hearing only one matter at a time.

That the Commissioners should have power to dispose of small matters in dispute without, in all cases, leaving the assignees to bring an action, there being a power in the Court of Appeal to direct an action if it should think fit.

We believe the result of these alterations would be so to relieve the Commissioners that less than the present number could do all the work, and do it more efficiently.

6, 7. The messenger's mileage, possession money, and charges should be reduced. The office of messenger should certainly be re-

tained. An officer of firmness, decision, and honesty is wanted at the first starting of a bankruptcy. The messengers and officers' bills should be taxed in the presence of the solicitors, and not behind their backs as at present.

It is a fact that is gradually becoming more universally admitted and acted upon (see 15 & 16 Vict. c. 87, s. 16), that all the judicial establishments of the country exist, not for the benefit of the suitors only, or even principally, but for that of all the citizens of the country, and that it is as unjust to throw upon the suitors the expense of maintaining the civil courts, as it would be to throw upon those who have been robbed the expense of maintaining the police establishment. So long as access to the courts of justice is impeded by heavy fees, so long will every endeavour be made to escape the necessity of resorting to them. This motive, of course, applies with peculiar force to those who are dealing with insolvent estates. Private arrangements are in many respects unsatisfactory to both parties. The statements of debtors cannot be subjected to a judicial test, and outstanding creditors very frequently cannot be prevented securing a preference. But these inconveniences are submitted to in preference to what is felt to be the extortion of the heavy court and other incidental fees, together with the other objections to the Court, which we have mentioned.

If the Court of Bankruptcy is to be considered a criminal court, this argument becomes one, not for the extension of a recently adopted principle, but merely for the consistent application of one that has been long established. We think, therefore, that all court fees ought to be abolished.

8. We do not think that there exists at present a satisfactory check upon the accounts of official assignees. We express this opinion entirely upon general grounds, and quite irrespective of the character and merits of the gentlemen actually filling the office.

9. The accounts should be at the office of the official assignee for the inspection of all the creditors, a week before or after audit. The creditors should have written notice; and if no exceptions are taken, they should be final; the audit being made, as before mentioned, in the office of the official assignee, and the solicitors to the assignees being, of course, at liberty to except as a creditor could.

10. This is a difficult question. Practically there is a very general dissatisfaction with the way in which the present mode of remunerating the official assignees works.

11. We think the commission of the official assignee is great, and the mode in which the business is transacted by some of them very unsatisfactory; and we think the following changes desirable:—

That they should be paid by salaries; and that, if they have any commission in addition, it should only be a small per centage on debts actually collected by them. At present their largest commission is upon estates and other sales in which they take no part. The whole

trouble of a sale falls upon the auctioneer, and solicitor, and often the messenger; and their bills are a sufficient deduction from the proceeds.

12. We are of opinion that the official assignees should have offices in the building, and be required to attend them daily, and that all moneys should be paid direct into the bank upon a ticket or direction given in the official assignee's office. This would prevent all defalcations.

13. We do not approve of the principle of classifying certificates, but we think that the conduct of a bankrupt ought to come under judicial review, before he is released from his debts, and that the Commissioner should have a large discretion as to the conditions to be imposed on granting the certificate; but that in no case should it be refused altogether. The reasons given for the judgment of the Court would be much more effective than the mere classification of certificates respecting which it is extremely difficult to draw a line. The Judge would, moreover, in this way be much better able to do justice to the very great variety of conduct upon which he has to adjudicate.

14. We believe that in substance, the existing system has proved a considerable check upon the conduct of traders, and probably, which is also of much importance, upon the professional advice which they receive. On the other hand, it is open to the objection just pointed out, which is proved by the working of the system, and each Commissioner being left to form his own rules for its application to the cases before him, a very great diversity has arisen in the practice in the different Courts as to the amount of demerit to correspond to the different classes of certificates; and this, in itself, is a substantial injustice.

15. We think that some mode ought to be adopted to effect a uniformity in the practice of all the Courts upon this subject; that the rules provided by the Act are in some respects not strict enough, particularly that gambling in any market by time bargains, whether in goods, shares, or stocks, foreign or English, ought to be visited with equal severity. On the other hand, we think that much injustice has been done by the limits imposed by the Act upon the discretion of the Commissioners.

16. In addition to the suggestions contained in our answers to the first seven questions, we are of opinion that the present Court of Appeal in Bankruptcy is very unsatisfactory. An appeal at present is, in fact, a rehearing before an extremely expensive tribunal—one, indeed, that is, on that account not open to bankrupts unless they happen to have wealthy friends. We think that a restoration of the old subdivision Courts would be much more satisfactory.

We also venture to suggest the following alterations:—

That a sale under an execution should, in all cases, be an act of bankruptcy, if a petition is filed within seven days of such sale; the execution creditor, however, being always allowed his costs.

That the sheriff should be empowered to seize and sell, under an execution, all goods in the order and disposition of the debtor.

That the law as to bankrupts' leases be altered. At present, if the assignees reject the lease, the bankrupt, by the mere oversight of omitting also to reject it, within 14 days after notice, loses all power of freeing himself from his liability as tenant; and, on the other hand, if a fraudulent man, he is frequently enabled to extort a sum of money from the landlord, as the price of giving up possession. If the lease is of any value, it ought to go to the assignees. If it is of none, it ought not to be left to the bankrupt, either as a burden or a means of extortion. We are, therefore, of opinion, that if the assignees decline to accept it, the tenancy ought immediately to determine.

We also think that the release from liability given to the bankrupt, ought to be as complete as his surrender of property is required to be; and that it should, therefore, extend to all future and contingent debts and claims, whether they are capable of being valued and proved or not. Bankruptcy ought, so far as pecuniary liability is concerned, to be equivalent to a civil death.

#### ANSWERS OF THE UNDERSIGNED SOLICITORS IN THE CITY OF LONDON.

The undersigned, having held meetings to consider the questions of the Bankruptcy Inquiry Commission, have concurred in opinion on the answers which follow:—

We propose, however, each to send in any separate observations that may occur to us, and the only object of the present return is to give the Commissioners our joint report upon the points upon which we agree. And in this joint report we confine ourselves to answer to the particular questions without going into any general topics or replying to the general questions. And we also confine ourselves to the district of the London Court.

1. The diminution of the business of the Court is to be attributed, in our opinion, to the following causes:—

(a.) To an increased prosperity of trade since 1847, and to the smaller number of insolvencies of all classes of trades in the metropolis.

(b.) To a strong impression prevailing in the metropolis, and particularly amongst the higher classes of merchants, against bankruptcy, and a decided preference to amicable arrangements by inspectorship or composition. This impression prevails equally on the part of the creditors and debtors.

As regards the creditors, it is partly perhaps the result of a more kindly feeling which has grown up in all classes of society, but it is principally owing to the constitution of the present Courts, which have by successive Acts of Parliament become essentially judicial and criminal Courts, and greatly lost their merely administrative character.

The creditors complain that the control

and management of the bankrupt's estate is taken from them, and they have to attend a crowded Court with great formalities; and the frequent publication in the newspapers of the names of the creditors, the debts proved, and the discussions on contested debts, have also tended to make the system unpopular to creditors.

On the part of the merchant debtors of a higher class there has always been an objection to pass through the ordeal of bankruptcy; and this has been greatly increased by the present constitution of the Court, and especially since the last Act has given the Court all the attributes of a criminal tribunal.

There is also a predilection amongst the same class of the mercantile community in favour of arrangements by composition or inspectorship. A composition is generally preferred; and an inspectorship is looked upon generally as preferable to bankruptcy for the administration of large estates.

The great expenses of the Bankruptcy Court form a considerable ingredient in the preference given to inspectorships and compositions.

And the clauses in the last Bankruptcy Act, which were intended to give validity to all deeds of arrangement assented to by six-sevenths of the creditors, have in some degree contributed to the diminution of the number of bankruptcies, and would have had the effect of diminishing bankruptcies still more if the Courts of Law had not put a construction upon those clauses which has entirely excluded deeds of composition, and has very much limited their operation as to other deeds.

We believe that the warehouseman and shopkeeper, and what may be termed the middle and lower class of traders, are deterred by the expenses of bankruptcy from resort to that Court; and we are of opinion that if the proceedings in the Court were made more cheap, bankruptcy would be preferred to any other mode of administration, except compositions, by those classes of the trading community.

We think that the high rate of fees, and the expenses payable in the Court, contribute more than any other circumstance to the diminution of the business of the Court, as far as such diminution can be considered as temporary or capable of being removed.

2. We think that the present insufficiency of the funds of the Court to meet its present expenses is likely to be permanent unless the Court is made more attractive, and the strong feeling at present prevailing against it can be removed as regards the higher class of traders, and unless the expenses be greatly diminished so as to satisfy the middle or lower class of traders.

We think that if the expenses were considerably lessened the number of bankruptcies amongst the middle and lower class of traders might be increased.

But the other causes which we have mentioned will operate, as we believe, to prevent the permanency of any great increase of business, or, in other words, will continue the existing diminution.

3. We all think that a reduction of the establishment of the Court in London could now be safely and properly made as follows:—

|                                        |   |
|----------------------------------------|---|
| By reducing the Commissioners to . . . | 3 |
| Registrars to . . .                    | 3 |
| Official Assignees to . . .            | 6 |
| Messengers to . . .                    | 3 |

Brokers to be altogether dispensed with.

We doubt about the necessity of continuing the office of the accountant in bankruptcy, with its expensive staff.

8. We all think there exists at present a sufficient check on the accounts of the official assignee if it be properly exercised.

9. We all agree in suggesting, that a duty might be thrown upon the registrars to see that the existing check be properly applied in each bankruptcy.

10, 11. After much consideration we have come to the conclusion—

(a.) That it is desirable that the official assignee be remunerated, partly by fixed salary, sufficient to cover the outpocket expenses of his office. We consider the official assignees to be a valuable and useful body, and that their services, when efficiently applied, entitle them to be well paid.

(b.) That they should also have, besides a fixed annual sum, a sum proportionate to their labour in collecting the assets, and such as shall stimulate them in the performance of their duties.

(c.) That the present irregularities of income of the official assignees should be to a certain extent remedied, but with a due regard to the expediency of the income being also to a certain extent proportionate to the respective labours of each.

(d.) That the sum charged for examining accounts should be abolished.

In order to carry out the above principles, we have agreed to the following suggestion:—

(e.) That the gross total amount of remuneration all estates during the year, should be considered as a common fund.

(f.) That out of such common fund an annual sum (which we have fixed at 800*l.* a year) be in the first instance paid to each official assignee.

(g.) That, subject to such payment of a fixed annual income, the balance of the common fund be divided amongst the official assignees *pro rata*, according to their respective receipts.

(h.) e. g. If the common fund amounted to 24,800*l.*, and the official assignees were six in number, 4,800*l.* would be equally divided. The remaining 20,000*l.* would be divisible amongst them in proportion to the respective amounts paid into the common fund by each.

12. We approve of the appointing of the official assignee resting with the Lord Chancellor, but we think that persons who have proved themselves to be able and efficient clerks in the offices of the official assignees, should be eligible to succeed them.

13—15. A great difference of opinion exists as to certificates, and we cannot come to any common conclusion on the subject.

16. We have, also, not agreed as to the propriety of throwing any part of the expenses on the Consolidated Fund.

GERMAIN LAVIE, of the firm of Oliverson, Lavie, and Peachey.

JOHN REES, of the firm of Wilde, Rees, Humphry, and Wilde.

JOSEPH MAYNARD, of the firm of Crowder and Maynard.

WILLIAM MURRAY, 11, London Street.

EDWARD LAWRENCE, of the firm of Lawrence, Pless, and Boyer.

JOHN LINKLATER, of the firm of J. and J. H. Linklater.

W. H. ASHURST, jun., of the firm of Ashurst and Son.

I concur in the opinions above expressed.

JAMES FRESHFIELD, jun., of the firm of J. C. and H. Freshfield.

## DIFFERENCES IN THE MERCANTILE LAWS OF ENGLAND, IRELAND, AND SCOTLAND.

### *England and Ireland.*

#### LIMITATION OF ACTIONS.

##### *Period of Limitation.*

1. All remedy by action or suit to enforce payment of a debt ceases (in the absence of acknowledgment or part payment)—

1. If the claim rest on a document under seal, or on a judgment, at the end of 20 years—

2. If the claim rest on a document not under seal, or on a verbal contract merely, at the end of six years, from the time at which the right to sue first accrues; except in cases of disability.

2. The expiration of the statutory period of limitation does not in England *extinguish* the debt: consequently the creditor may avail himself of a continuing lien on property of the debtor in his hands.

3. In all accounts, except those which are within the exception of "such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants," the legal remedy, in general, ceases as to any item more than six years old, though there be items less than six years old. 21 Jac. 1, c. 16, s. 3 (England); 10 Car. 1, sess. 2, c. 6 (Ireland).

4. The exception of merchants' accounts does not include any account in which the items are all on one side.

Nor the case of mutual sales between two merchants, where neither party could have an action against the other at Common Law for an account, or for not accounting. *Cottam v. Partridge*, 4 Man. & Gr. 271.

##### *Disabilities.*

5. If either the creditor or the debtor be out of the United Kingdom at the time the right to sue becomes absolute, the period of limita-

### *Scotland.*

#### LIMITATION AND PRESCRIPTION.

##### *Period of Prescription.*

1. All legal remedy to enforce payment of a debt does not cease until the end of 40 years from the time at which the right first accrues.

Parole proof, bills of exchange, and writings not attested although not holograph, cease to be available at the end of certain shorter periods, varying according to the subject-matter from three years to twenty years. But proof by other writings under the debtor's hands, or by reference to the oath of the debtor, may be made up to the end of the 40 years.

2. The expiration of the period of 40 years *extinguishes* the debt.

Bonds of caution for sums of money become extinct in seven years.

The principal short prescriptions applicable to mercantile claims whereby the proof is limited as mentioned above in No. 1, although the debts are not extinguished, are,—

1. The triennial.—Book debts, merchants' or traders' accounts, and the like.

2. Quinquennial.—Bargains as to moveables not running into account.

3. Sexennial.—Bills of exchange.

3. The legal remedy continues in respect of all the items of an open account, if one of the items be within the period of prescription (three years), and if that period have not run out between any two consecutive items.

4. And such remedy continues, even where all the items are on one side of the account.

##### *Disabilities.*

5. The absence of the creditor from Scotland is not a valid answer to a plea of prescription; nor is that of the debtor, if voluntary,

*England and Ireland.*

## LIMITATION OF ACTIONS.

*Disabilities.*

tion does not commence until the return of the absent party.

The absence of one of several joint *creditors* does not prevent the period commencing. *Perry v. Jackson*, 4 T. R. 516.

But the absence of one of several joint *debtors* does prevent the commencement of the period. *Fannin v. Anderson*, 7 Q. B. 811.

If an action be brought in England to recover a debt:—

1. The absence of the *creditor* alone from England, if he be in any other part of the United Kingdom, the Isle of Man, or the Channel Islands, does not prevent the bar. 21 Jac. 1, c. 16, s. 7, explained by 3 & 4 Wm. 4, c. 42, s. 7.

2. But if the *debtor* be absent from England in any other part of the United Kingdom, the Isle of Man, or the Channel Islands, when the creditor's right accrues, the creditor has a period of six years in which to bring this action after the debtor's return to England. 4 & 5 Anne, c. 16, s. 19. *Lane v. Burnett*, 1 M. & W. 70.

The law is similar in Ireland. 6 Anne, c. 10, s. 17.

6. Minors have six years after attaining majority in which to enforce their claims, not derived from others.

*Acknowledgment.*

7. No acknowledgment of a debt will be effectual to keep it alive, or to revive it, unless it be in writing and contain a promise, express or implied, to pay the debt. 9 Geo. 4, c. 14, s. 1; *Hart v. Prendergast*, 14 M. & W. 741.

8. The acknowledgment must be signed by "the party chargeable thereby," and the signature of his agent is insufficient.

9. The acknowledgment must be made to the creditor or his agent. *Holland v. Clark*, 1 Y. & C. C. C. 151.

An *acknowledgment* by one co-contractor does not keep alive the claim as against the others. 9 Geo. 4, c. 14, s. 1.

But *part payment* by one co-contractor will keep alive or revive the claim against the others. *Channell v. Ditchburn*, 5 M. & W. 494.

## SHIPPING.

2. In case of difference between part owners as to the employment of the ship, the majority are entitled to rule it, and the minority cannot compel a sale.

But the minority can arrest the ship until security is given for their interest by the majority, the minority repudiating all interest in the employment determined on by the majority.

*Scotland.*

## LIMITATION AND PRESCRIPTION.

*Disabilities.*

and he remain subject to the jurisdiction of the Scottish Courts.

6. Minors in general are protected by Statute against the operation of prescription during their minority.

*Acknowledgment.*

7. An acknowledgment of a debt, made *within* the period of short prescription does not elide prescription.

But if the acknowledgment be made *after* the period of short prescription is completed, it will be effectual to prove the debt, if the acknowledgment be clear, although it contain no promise to pay. 1 Bell's Comm. 333.

8. A memorandum written by the debtor may in some cases be sufficient, though not signed by him; and an agent duly authorised may make an effectual acknowledgment in writing.

9. It is not indispensable in all cases that the acknowledgment should be made to the creditor or his agent.

## SHIPPING.

1. In case of difference between part owners as to the employment of the ship, the minority may insist upon a sale; or that, at a price put upon the shares, the majority shall, at their option, either sell their shares to the minority, or buy the shares of the minority. 2 Bell, 503.

England and Ireland.

LIEN.

1. Seamen have no lien for their wages on freight, after the cargo has been removed from the ship.

2. Property pledged for a particular debt is not in general subject to any lien for another debt not specifically charged upon it.

3. A security upon real property for future advances of money, or any other future grounds of debt, may be effectually created, and no limitation of the amount need be declared.

BAILMENTS.

Carriers.

1. Are liable for loss by accidental fire to goods in their care. *Forward v. Pittard*, 1 T. R. 27; *Hyde v. Trent & Mersey Navigation*, 5 T. R. 389.

Hiring of Goods.

2. In case of injury, the *onus probandi* of negligence in the hirer is on the owner. *Cooper v. Barton*, 3 Camp. 5, note.

MERCANTILE GUARANTEE.

1. "Any special promise to answer for the debt, default, or miscarriage of another person," "must be in writing, signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised," in order that an action may be founded thereon. 29 Car. 2, c. 3, s. 4 (England); 7 Wm. 3, c. 12, s. 2 (Ireland).

2. The absence of writing is not supplied by performance of the contract on the part of the creditor.

3. There must be a consideration for the guarantee, and such consideration must appear in the writing, or be the subject of well-grounded inference to be necessarily collected therefrom. *Hawes v. Armstrong*, 1 Bing. N. C. 761.

But the consideration may be trifling. *Haigh v. Brooks*, 10 Ad. & El. 309.

4. Representations "as to the character, conduct, credit, ability, trade, or dealings of any other person, to the intent or purpose that such other person may obtain credit, money, or goods," must be in writing, in order to found an action against the person making them. 9 Geo. 4, c. 14, s. 6.

5. A guarantee, whether to a firm or for a firm, consisting of two or more partners, ceases as to fresh transactions when a change takes place in the partners.

Scotland.

LIEN.

1. Seamen who have navigated a ship in any voyage have a preference in ranking on the freight earned in that voyage. 2 Bell's Comm. 512.

2. Property pledged for a particular debt may be retained by the pledges on the ground of another debt due to him from the pledger, though not specifically charged upon it.

3. Securities upon heritable subjects for future debts, or for debts of indefinite amount, are not competent. But the Statute 33 Geo. 3, c. 74, excepts "balances arising upon cash accounts or credits," if the principal and interest be limited to a certain definite sum, to be specified in the security. 2 Bell, 240.

BAILMENTS.

Carriers.

1. Are not liable for loss by accidental fire to goods in their care. *Macdonald v. Ettels*, 15 Fac. Coll. 466; 1 Bell's Comm. 470.

Hiring of Goods.

2. In case of injury, the *onus probandi* of there having been no negligence in the hirer lies on him. *Robertson v. Ogle*, 1809, 15 Fac. Coll. 348; *Marquis v. Ritchie*, 1823, 2 S. & D. 386; 1 Bell's Comm. 454.

MERCANTILE GUARANTEE.

1. In general a mercantile guarantee can be proved only by writing, or by the oath of the cautioner. Yet it may be established by parol evidence where it is an integral part of a contract between the creditor and principal debtor, which may competently be proved by parol evidence. *Carruthers v. Bell*, 13 Nov., 1812, Fac. Coll.

2. Or where the creditor has acted upon it by furnishing goods, paying money, forbearing to take legal proceedings, or otherwise implementing the contract in whole or in part to the debtor. 1 Bell's Comm. 371.

The writing must be either holograph of the cautioner or surety, or be probative under the Act 1681, c. 5, or be followed by implement to some extent.

3. The writing containing the guarantee need not show any consideration. And in general no consideration is necessary to the validity of the guarantee as against the cautioner.

4. A verbal statement as to the position of another person, whereby a third person is induced to give him credit, will found an action against the person making the statement. *Hunter v. Carson*, 1824, 2 S. & D. 716.

5. A guarantee for a firm consisting of two or more partners ceases, but a guarantee to such a firm does not always cease, upon a change taking place in the partners.

## EDUCATION OF THE BAR.

"*MEN* prayed for rain, and Jupiter sent a flood. We asked for legal education, and the Council deputed to consider the subject have published a scheme of examination which makes us shudder even at the bare recital of the works which the unfortunate students are required to "get up" ere they can aim at the honours of the Profession. To be sure, the quiet souls can slip through, as in bygone days, by attending during one whole year the lectures of two of the Readers. As far as it goes, the alteration is an improvement. One would be inclined to say *à priori* that there is a better chance of learning something of law from an attendance upon two courses of legal lectures than from eating ten or twelve good plain dinners in an ancient Gothic hall. Still all men who have had a lengthened experience of public schools and universities are sufficiently aware of the impervious character of certain minds. Speaking from our own knowledge, we could quote instances in which the whole period from 10 until 22 years of age has been spent in the nominal study of the classical languages, and a young man has come out of the process utterly unable to construe two verses of the Greek Testament or half a dozen lines of Virgil in a creditable manner. The passive power of resistance to instruction which lies in idleness and incapacity is inconceivably great. We conclude, then, that as long as such a loophole is left open to idlers, and to young men who aim at the degree of barrister purely as a matter of social distinction, but very little change from the old system will in reality have been effected. Under that old fiery port and leg of mutton method, the young men who regarded the study of the law as the means of their future subsistence, or who were inclined to enter upon it from still higher motives, did their best to obtain a competent knowledge of the subject. The changes in the system can scarcely be intended exclusively for their benefit. If we understand aright the motives which led to the alteration in our forms of legal education, they may in the main be summed up in this one sentence—it was a scandal that a young man should be admitted to the honours and practice of a liberal Profession, while there was no security that he was in the slightest degree acquainted with the simplest rules of the science which he professed. We examine our young candidates for holy orders, our surgeons, our physicians, our attorneys, our sea officers, our graduates, in the various faculties in the universities; why should "barristers" constitute the solitary exception? There is really no reason to be urged in favour of this singularity which would not apply with equal force to all the other cases. A new system was then propounded—it is the one actually in operation; and under it we find that the door is left as wide open as ever to all idlers who would come into the feast without the marriage garment. It may be, that the authors of the scheme trust to indirect in-

fluences, but in such matters the plainest and shortest way is ever the best. There was no hardship in requiring from all candidates, for the degree of barrister some little proof that they were acquainted with the rudiments of English law. As matters stand, they may at their pleasure undergo a public examination, at which such positive proof is required, or they may, if they will, simply give their attendance at a couple of courses of lectures, and so slip unnoticed through. It was a more obvious course to make it incumbent upon all to undergo a moderate but sufficient examination, and then to make any further arrangements which might seem fit for the encouragement of more distinguished students. Such an improvement in the system cannot be much longer delayed; once admit the principle of testing capacity as the condition of admission to the degree of barrister, and who shall remain unexamined?

"As much as the arrangements are too laxly conducted in one respect, so do they appear to be overstrained in others. We know not of what metal the young students are made who are now aiming at forensic distinction, but we are very confident that some twenty, or even ten years back, their predecessors would have stood aghast at the bill of fare which the Council of Legal Education have prepared for their scientific sustenance. For example, the more aspiring candidates are to be examined under the head of "Constitutional Law and Legal History" in the following books, or rather works:—The State Trials, the Parliamentary History, Clarendon, Burnet, Millar, Rapin, Tindal, and Blackstone's Commentaries. They are to be intimately acquainted with the progress of our institutions and the changes in our constitutional government. They must make themselves so well acquainted with the histories of the periods that they shall be as though they had lived through the reigns of Henry VIII. and Elizabeth, and had taken share in the grand constitutional struggles which were acted during the dominion of the Stuarts and in the reign of William III. They are to have more particularly the stormy discussions and open-air contests during the reigns of Edward III. and Richard II. at their fingers' ends. They must be ready to give an account of any point which arose in the course of the state trials down to the reign of Queen Anne, as though they had been in Court taking notes of the proceedings. Surely any one of the subjects named is well-nigh sufficient in itself to exhaust the efforts of an industrious and well-spent life; but, even so, the subject of constitutional law constitutes but a section of the multifarious matters to which the law student must direct his attention. Let us presume him to have mastered the Parliamentary History, the State Trials, and the other little works above-mentioned; he must then remember that the Reader on Jurisprudence and the Civil Law will have a word to say to him. For this gentleman he must prepare

himself in the Roman law of persons, of real, verbal, and consensual contracts; and in the course of his studies upon this point he may, if he will, avail himself of the "Commentarii Juris Privati Romani" of Warnkönig. He must then freshen up his Grotius on Ownership, Promises, Contracts, and Oaths—not forgetting the little treatise "De Jure Pacis et Belli," Dr. Whewell's edition. He should next turn his thoughts to the "Digest," and, when tolerably familiar with this little work, he may relax his mind with Kent's "Commentaries on the Law of Nations." For fear this somewhat antiquated law should at all interfere with his future utility, he must consider the knowledge he has acquired in connexion with the modifications introduced into the general international law by the practice of the present war. When he has done all this he will be in a pretty frame of mind to "top up," as our American cousins would say, with Story's "Conflict of Laws." So far of jurisprudence and civil law. When the diligent student has placed himself in favourable conditions to try an intellectual back-fall or two with the Readers on Constitutional and Civil Law, a third antagonist awaits him—the toughest of the three. He only escapes from the clutches of the two dragons named to fall into the talons of the griffin or harpy who presides over the knowledge more especially available in the High Court of Chancery. This knowledge, as all men are perfectly aware, is of a highly refreshing and delectable character. First, in order to get just a foretaste of future bliss, let the student take a snap at Smith's "Manual." When his palate hath been thus whetted, let him quietly degustate Fonblanque on "Equity"—a delightful work. After so much mental relaxation, he can scarcely complain if he be required thoroughly to master the Act for the Improvement of Equity Jurisdiction, 15th and 16th of Victoria. A *bonne-bouche*, however, awaits him to make amends in the shape of "Mitford on Pleadings in the Court of Chancery," a work of which it may justly be said, that it is well calculated to superinduce a calm and contemplative frame of mind. White and Tudor's Leading Cases, with all the notes, and Pothier's little trifle upon "Partnership," will conclude all that it may be necessary for the student to know under this head at his outset in his Profession.

"Thus far of Constitutional Law, of the Civil Law, and of Equity. The young man; however, who aims at Themis's more distinguished favours must not forget that there are such noble sciences in existence as the Law of Real Property and the Common Law. We will suppose him, first, to begin with real property, as the subject is not very enlivening, and doubtless the student would be glad to wash his hands of it with all convenient despatch. Mr. Joshua Williams's excellent little treatise, to be followed by Stephens's Commentaries and Sugden on Powers, will well launch him into the subject. Then come the opera-

tive words; the student will be examined in "the practice of conveyancing, with reference to the framing of purchase deeds, mortgages, and settlements." Many excellent collections of precedents are in existence, extending throughout many portly volumes, and our young friend could not do better than to give himself up to the copying and recopying of these mystic forms from eve to morn, from morn to dewy eve, by which process, no doubt, he will find his mind materially improved. It does not consist with considerations of space, which we must perforce regard, that we should follow the rising lawyer through the remaining subjects under this head, to which his attention must be directed, nor upon his appointed excursions into the more flowery regions of the Common Law. Candour compels us to admit that the Common Law programme is framed with a better regard to the capacities of the human mind than any of the other sections it has been our duty to notice. Can the Council of Legal Education in right reason expect that any young man can attain a thorough knowledge of the subjects they point at as "to be thoroughly known" without converting himself into an idiot at the end of the process, if his labours are attended with but the most partial success? Possibly it may be admitted by the public as no insane boast if we say that we have, in a certain slight degree, turned our attention to the subject of Parliamentary history, State Trials, Constitutional struggles, &c.; and we can only say, even now, when the best exertions of our lives have been given to this single subject, we should most unfeignedly shrink from such an examination on it as is proposed by the Council of Legal Education for the benefit of young men but 25 years of age. We say nothing of the "Digest," and Jarman and Bythewood's "Conveyancing Forms," and Fonblanque's "Equity Jurisprudence," &c. A man who was well acquainted in middle life, after twenty years of continuous study, with any one of these subjects, must have lived the life of a recluse in order to make himself a learned lawyer."—From *The Times* of Sept. 1.

## LAW OF ATTORNEYS AND SOLICITORS.

### SERVICE OF FOUR-DAY ORDER ON NON-DELIVERY OF BILL.

ON a motion for the four-day order against a solicitor for non-delivery of his bill of costs, it appeared that the previous order had not been personally served on the solicitor but only left at his office.

The *Master of the Rolls* said, there ought to have been a personal service, and the former order must therefore be served before the four-day order could be made. *Young v. Goodson*, 2 Russ. 255, and *In re Lloyd*, 10 Beav. 451, were cited. *In re Wisemold*, 16 Beav. 357.



## POINTS IN EQUITY PRACTICE.

## SALE OF CHARITY LANDS UNDER SIR S. ROMILLY'S ACT.

A PETITION, presented under the 52 Geo. 3, c. 101 (Sir S. Romilly's Act), to obtain the sanction of the Court to the sale of some real estate belonging to a charity was granted, where it was obviously for the benefit of the charity, on the authority of *In re Parke's Charity*, 12 Sim. 329. *In re Overseers of Ecclesall*, 16 Beav. 297.

## APPOINTMENT OF NEW TRUSTEES.

*Held*, that the Court in appointing new trustees, is not limited to the number originally nominated by the testator. *Plenty v. West*, 16 Beav. 356.

## CONSTRUCTION OF STATUTES.

## EQUITY JURISDICTION IMPROVEMENT ACT.

## ALLOWANCE OF INCOME PENDENTE LITE.

An application by a legatee for a direction under the 15 & 16 Vict. c. 36, s. 57, that the receiver might keep down the interest on the legacy, can only be granted on the admission of assets by the executors taken down by the registrar. *Knight v. Knight*, 16 Beav. 358.

## SUBSTITUTED SERVICE OF ORDER TO REVIVE.

Upon the abatement of a suit, an order to revive had been obtained under the 15 & 16 Vict. c. 86, s. 52, and the plaintiff obtained an order for substituting service of the order on the solicitor of the defendant, who was out of the jurisdiction, and had given the solicitor a general power of attorney.

The order of revivor was served, and on no appearance being entered, the plaintiff moved under s. 52, for liberty to enter an appearance. The *Master of the Rolls* said—"This is not exactly the case of *Zulueta v. Vincent*, 3 M.N. & G. 246, the question being, whether substituted service within the jurisdiction on a party out of it, is a sufficient ground for an order empowering the plaintiff to enter an appearance for the defendant. I am of opinion that the plaintiff is entitled to the order which is asked. It must be served on the solicitor in the same way as the order to revive. I also think, that the plaintiff is entitled to a general order that service of all proceedings in the cause upon the same person shall be good service on the defendant." *Forster v. Menzies*, 16 Beav. 568.

## MRS. STOWE ON ENGLISH LAW AND LAWYERS

THIS celebrated American writer in her "Memories of Foreign Lands," thus speaks of some of our English worthies on the Bench; and incidentally glances at the old complaint of Chancery procrastination.

"Among the speakers I was particularly pleased with Lord Chief Baron Pollock, who, in the absence of Lord Chief Justice Campbell, was toasted as the highest representative of the Legal Profession. He spoke with great dignity, simplicity, and courtesy, taking occasion to pay very flattering compliments to the American Legal Profession, speaking particularly of Judge Story. The compliments gave me great pleasure, because it seemed a just and noble-minded appreciation, and not a mere civil fiction. We are always better pleased with appreciation than flattery, though perhaps he strained a point when he said, 'Our brethren on the other side of the Atlantic, with whom we are now exchanging legal authorities, I fear largely surpass us in the production of philosophic and comprehensive forms.' Speaking of the two countries, he said, 'God forbid that, with a common language, with common laws which are materially improving for the benefit of mankind, with one common literature, with one common religion, and above all, with one common love of liberty, God forbid that any feeling should arise between the two countries but the desire to carry through the world these advantages.'

"Mr. Justice Talford proposed the literature of our two countries, under the head of 'Anglo-Saxon Literature.' He made allusion to the author of Uncle Tom's Cabin and Mr. Dickens, speaking of both as having employed fiction as a means of awakening the attention of the respective countries to the condition of the oppressed and suffering classes. Mr. Talford appears to be in the prime of life, of a robust and somewhat florid habit. He is universally beloved for his nobleness of soul and generous interest in all that tends to promote the welfare of humanity, no less than for his classical and scholarly attainments.

"Mr. Dickens replied to this toast in a graceful and playful strain. In the former part of the evening, in reply to a toast on the Chancery department, Vice-Chancellor Wood, who spoke in the absence of the Lord Chancellor, made a sort of defence of the Court of Chancery, not distinctly alluding to Bleak House, but evidently not without reference to it. The amount of what he said was, that the Court had received a great many more hard opinions than it merited; that they had been parsimoniously obliged to perform a great amount of business by a very inadequate number of Judges; but that more recently the number of Judges had been increased to seven, and there was reason to hope that all business brought before it would now be performed without unnecessary delay.

"In the conclusion of Mr. Dickens's speech, he alluded playfully to this item of intelligence; said he was exceeding happy to hear it, as he trusted now that a suit, in which he was greatly interested, would speedily come to an end. I heard a little by-conversation between Mr. Dickens and a gentleman at the bar, who sat opposite me, in which the latter seemed to be reiterating the same assertions, and I understood him to say, that a case not extraordinarily complicated might be got through within three months. Mr. Dickens said he was very happy to hear it; but I fancied there was a little shade of incredulity in his manner; however, the incident showed one thing; that is, that the Chancery were not insensible to the representations of Dickens; but the whole tone of the thing was quite good-natured and agreeable.

"In this respect, I must say I think the English are quite remarkable. Everything here meets the very freest handling; nothing is too sacred to be publicly shown up; but those who are exhibited appear to have too much good sense to recognise the force of the picture by getting angry. Mr. Dickens has gone on unmercifully exposing all sorts of weak places in the English fabric, public and private, yet nobody cries out upon him as the slanderer of his country. He serves up Lord Dedlocks to his heart's content, yet none of the nobility make any faces about it; nobody is in a hurry to proclaim that he has recognised the picture, by getting into a passion about it. The contrast between the people of England and America, in this respect is very unfavourable to us, because they are by profession Conservative, and we by profession Radical. For us to be annoyed when any of our institutions are commented upon, is in the highest degree absurd; it would do well enough for Naples, but it does not do for America."

gather from the statement by "Lex" of his case, the said agreement contains words of present demise. But then came the "poser," that I had never heard of a lease, except in connexion with years; and on consulting the "authorities"—those venerable old gentlemen which in these County Court and short-deed days, we allow to lie neglected on our shelves,—I found they generally seemed to think that a lease must be for years: one grave old fellow enumerates six "points," as he calls them, needful to constitute a lease. "Lex's" agreement has five of these points, but not the sixth; that is, it is not for years. The 2nd section of the Statute of Frauds, however, exempts from its operation leases not exceeding three years, and there is nothing in the exemption, or in the section, to show that there may not be a lease for weeks, or even for days; besides which the section speaks of leases, estates, interests of freehold, or terms of years, thus implying that there may be leases, *not* terms of years.

I, therefore, judge that "Lex's" letting is a lease out of the operation of the Statute of Frauds, and which, consequently, need not be in writing. "Lex," however, says it *is* in writing; and then we have the case, *Prosser v. Phillips*, Bull. N. P. 269, which decides that though certain leases described or alluded to by the said Statute, need not be in writing, yet if writing be employed, the same stamps will be necessary as for any other lease; and so the said agreement will fall under the law laid down in *Prosser v. Phillips*, and require a proper stamp, which I believe to be a 5s. one under the schedule of the 13 & 14 Vict. c. 97, as a "lease not otherwise charged."

G. H.

Another Correspondent "W." refers "Lex" to sect. 23 of the New Stamp Act (printed *ante*, p. 321).

## SELECTIONS FROM CORRESPONDENCE.

### STAMP ON AGREEMENT.

To the Editor of the *Legal Observer*.

SIR,—I venture to suggest that the agreement mentioned by your Correspondent "Lex" (*ante*, p. 349) is in fact a lease. I was led to this conclusion, first, because, as far as I can

## NOTES OF THE WEEK.

### SHERIFFS OF LONDON AND MIDDLESEX.

Henry Muggeridge, Esq., and Charles Decimus Crosley, Esq., Sheriffs.

Frederick Farrar, Esq., of Doctors' Commons, and Alexander Crosley, Esq., of Lombard Street, Undersheriffs.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Master of the Rolls.

*Alexander v. Brame*, June 29; July 5, 17, 1854.

CHARITABLE GIFT BY DEED OF COVENANT.—ACTION AT LAW.—STATUTE OF MORTMAIN.

A testator by a deed of covenant directed the payment of a sum of money for a charitable use, but the validity of the deed

under the Statute of Mortmain was impeached: Held, that the trustees must proceed at law against the executors, with liberty to the next of kin to defend.

A QUESTION arose in this suit as to the validity under the Statute of Mortmain of a deed of covenant whereby the testator, Mr. Brame, directed a sum of 60,000*l.* to be paid within six months after his death for the use of the Tooley charity at Ipswich.

*Roupell, Lloyd, R. Palmer, Willecock, Speed, Grenside, Giffard, Surridge, Rodwell, Nalder, and Carter* for the several parties.

*Cur. ad. vult.*

The Master of the Rolls said, that if the covenants in the deed were not good in law they were not such as equity could deal with, and therefore the parties of the second part must proceed at law against the executors, with liberty to the next of kin to defend.

Vice-Chancellor Kindersley.

*Prendergast v. Moore.* July 14, 1854.

EXECUTOR OF SHAREHOLDER IN JOINT-STOCK COMPANY.—RIGHT TO INDEMNITY.

Held, that the official manager of a company, in course of being wound up, is entitled to have notice of an application, on behalf of the executor of a deceased shareholder, for a portion of the assets to be set apart as an indemnity against any future claim in respect of the shares.

It appeared in this administration suit that the testator held certain shares in a joint-stock company, which was being wound up under the 11 & 12 Vict. c. 45, and 12 & 13 Vict. c. 108, and that his executor had been placed upon the list of contributories. The question now arose, whether he was entitled to have a portion of the assets set apart as an indemnity in respect of any future claim,—there being no debts due from the company.

*Lewin and Amphlett* for the several parties.

The Vice-Chancellor said, that the case must stand over in order that the official manager might have notice of the application.

Vice-Chancellor Stuart.

*Golds v. Grenfield.* June 28, 1854.

WILL.—CONSTRUCTION.—RELEASE OF DEBT BY COMPOSITION-DEED.

A testator, by his will directed, that any legatee indebted to him at the time of his death, should accept the amount of his debt in part satisfaction of the legacy. It appeared that the plaintiff, who was one of the residuary legatees, had entered into a composition-deed with his creditors, of whom the testator was one, under which a dividend of 7s. in the pound only was paid, and that the creditors had covenanted not to sue the plaintiff: Held, on special case, under the 13 & 14 Vict. c. 35, that the plaintiff was not liable to have the balance deducted from his share.

THE testator, who was one of the trustees under a composition-deed entered into by the plaintiff with his creditors, had covenanted thereby not to sue the plaintiff either at law or in equity, and by his will, after bequeathing all his property in trust for sale and conversion, he gave one-sixth of the residue after payment of his debts, &c., to the plaintiff, and he directed that such of his legatees as should be

indebted to him at the time of his death should accept the amount of the debt as part of their share of the residue. It appeared that a dividend of 7s. in the pound had only been paid under the deed, and the question arose on this special case, under the 13 & 14 Vict. c. 35, whether the plaintiff was liable to have the balance deducted from the amount of his share.

*Solway* for the plaintiffs; *Craig and Frederick Waller* for the defendants.

The Vice-Chancellor said, that the deed operated as a release of the entire debt, and that the plaintiff was therefore entitled to receive the whole amount of his share.

Vice-Chancellor Wood.

*Tate v. Leithhead.* July 14, 1854.

DONATIO INTER VIVOS OR MORTIS CAUSA.—COMPLETED TRUST.

The testator being confined to his bed by illness, had handed to the defendant a cheque for 900*l.* adding on the paper a memorandum as follows:—"H. R. Johnston, 200*l.*; Thomas Leithhead, 200*l.*, executorship fund, 500*l.*," and he directed him to retain the 200*l.* in discharge of a debt due to himself. Upon his death three days after: held, that the gift to H. R. Johnston was inter vivos and not donatio mortis causa.

It appeared that the testator, Mr. Forster, being on May 29, 1850, confined to his bed by illness, had drawn a cheque in favour of Mr. Thomas Leithhead for 900*l.*, and that on the same sheet of paper he added the following memorandum:—"H. R. Johnston, 200*l.*; Thomas Leithhead, 200*l.*; executorship fund, 500*l.*." The testator handed the cheque to the defendant, and directed him to keep 200*l.* in discharge of a debt due to himself, and to keep the 200*l.* for Mr. Johnston, and the 500*l.* as part of the general personal estate. The cheque was forwarded on the same day to the bankers, who remitted its amount to the defendant's bankers on May 31, and advice thereof was received on June 1. The testator died on the afternoon of June 1, having on May 28 made a will, and on the following day a codicil, appointing the defendant his executor. The payment to Mr. Johnston was made after the testator's death, and the creditors claimed it as a *donatio mortis causa*, and as subject to the testator's debts.

*Willecock and W. H. Harrison* for the plaintiffs; *Dickenson* for the defendant.

The Vice-Chancellor said that the transaction was not a mere agency, but a trust in favour of Mr. Johnston, fully perfected in the testator's lifetime: *Moore v. Darton*, 20 Law J., N. S., Ch. 626. The transaction was in no way dependent on the testator surviving, and if he had survived he could not have recovered back the amount, and it was therefore to be regarded as a complete gift *inter vivos*.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

SATURDAY, SEPTEMBER 23, 1854.

### LIMITED LIABILITY PARTNERSHIPS.

In a recent Number we laid before our readers the Report of the Commissioners on Mercantile Law, so far as relates to the limited or unlimited liability of partners.<sup>1</sup> The five Commissioners who have signed the Report have come to the conclusion that it is not expedient to alter the law and allow persons at their own election to trade with limited liability.<sup>2</sup> Some of the Commissioners differ in opinion from the majority of their brethren on this important subject, and it will be observed that the report, whilst it comes to an adverse result on the proposed improvement, recommends some modifications of the existing law.

Thus, the Commissioners admit that many useful enterprises, calculated to produce benefit to the Public and profit to those engaged in them, are of such magnitude that no private partnership can be expected to provide the funds necessary to carry them into effect, or superintend or manage them. Of these, docks and shipping companies are given as instances.

They also acknowledge that there are other undertakings from which public benefits may be expected to accrue, which it is desirable to encourage by limiting the liability of those who embark in them. The instances of this class are,—baths, wash-houses, lodging-houses, and reading-rooms:

With regard to some of these, which interfere with the rights of property, the Commissioners recommend that the autho-

rity of Parliament should be obtained; but in others, the partnerships should be constituted by charter, subject to regulations to be fixed by a Government Board.

The substance of the objections, urged by the Commissioners against an alteration of the law, are as follow:—

1st. That there is no want of a sufficient amount of capital for the requirements of trade, and that the annually increasing wealth of the country and the *difficulty of finding profitable investments*, seem sufficient guarantees that an adequate amount will always be devoted to mercantile enterprise.

2nd. That any forced action upon capital would have a tendency to induce men to embark in *speculative adventures to an extent that would be dangerous to the interests of the general commerce of the country.*

3rd. That the *reputation of British merchants*, either at home or abroad, would not be raised by the establishment of firms trading with limited liability; and that those who are in favour of the system, recommend stringent regulations to prevent fraud.

4th. That the benefit to be acquired by the managing or limited partners, will be more than counterbalanced by the injury to traders bearing the burden of unlimited liability, and entering into competition with those who enjoy the protection of the proposed law.

The Commissioners state, that in answer to the questions they issued, they have received communications from gentlemen of great experience and talent, who have arrived at conclusions diametrically opposite, and that it is difficult to say on which side the weight of authority preponderates. In this doubtful state of the evidence, and

<sup>1</sup> See p. 157, *ante*.

<sup>2</sup> The Report is signed by the following Commissioners:—T. B. Cusack Smith, C. Grenville, John Marshall, Thomas Bailey, and R. Slater.

amidst the conflicting opinions of the Commissioners themselves, we may be permitted to offer some remarks on the main question, which we think concerns in no small degree, the interests both of the Profession and the Public.

In the first place, let it be clearly understood that the advocates for partnerships of limited liability, expressly suggest that the alteration of the law should be accompanied by sufficient provisions for guarding the public against fraudulent and secret partnerships. We shall presently advert to the safeguards which it appears may be easily established for the security of creditors.

It may be observed, in answer to the first objection of the Commissioners, of their being "no present want of capital, but a difficulty in finding profitable investments," that this difficulty would probably be removed by the suggested alteration. We believe there are thousands of persons who have money to invest and are desirous of increasing their incomes by larger dividends than can be obtained in the public funds or on the security of land or houses, and that such persons would willingly risk part of their capital in undertakings of a profitable nature, if assured of the exact limits of their responsibility. Take the instance of a man who has a permanent income arising from rents, dividends, or official salary, and has money unemployed. It is proposed to him to invest 500*l.* in a partnership business, requiring a considerable amount of capital either to establish or enlarge it, and which promises to yield 10 per cent. or more, without any personal services on his part in carrying on the concern. He may be a competent judge of the probable success of the company, and entertain entire confidence in the ability and integrity of the proposed managing partners. We can see no reason why the law should not allow him and others to embark their money in such an enterprise. The Limited Liability Partners will prudentially risk only so much in these speculations as they can afford,—reserving their permanent and safe investments untouched.

If, however, whilst advancing a moderate share of capital, and receiving a proportionate share of profit, they are liable to the whole extent of their fortune in case of the failure of the concern, they will withhold the money and remain content with the ordinary interest, and the Public will lose the benefit of the enterprise.

But, then, 2ndly, it is said, that this

"forced action upon capital" will lead to "dangerous speculations." The answer to this objection is, that the limited advance of capital will be as voluntary as loans, which now may be granted at any rate of interest, and that so far from these "speculative adventures" being injurious to the "general commerce of the country," the embarking of a limited capital, instead of loan, must be generally favourable to the creditors of the concern, for whilst the lender would come in with other creditors, or perhaps obtain a *priority*, the limited partner, besides being liable to the full amount of his agreed capital, must wait till all are paid, before he can receive any part of the surplus, if any should remain.

Next, with regard to the third objection, as to the injured reputation of British merchants, by the increased frequency of frauds, it is forgotten (as we have already intimated) that means would be taken to make known to all persons dealing with the firm, the several proportions of risk incurred by each partner. A Register of such partnerships would, of course, be established, and the very title of the firm might indicate that it was not a general or unlimited partnership, so that every creditor would be "affected with notice" of the nature of the establishment, and might readily ascertain the extent of each partner's liability.

On the last, or 4th, point, founded on the supposition that the advantage to limited partners would be counterbalanced by the disadvantage to other traders, it may be remarked that the objection admits that the proposed partnerships will be beneficial to those concerned in them,—an admission inconsistent with the other objection which assumes them to be dangerously speculative. But, in speaking of the protection of the proposed law, in contrast with the unlimited liability of ordinary traders, it should be borne in mind that the credit of both classes of partnerships will depend on the knowledge possessed, or supposed to be possessed, by the creditors of the solvency of the partners, whether few and unlimited or the contrary; and (as already observed) the Public Registry will show who are the persons to whom credit is given. Indeed, we can see no reason against, but much in favour of, a registration of all traders. Bankers are registered; so are Attorneys and others. A small fee would be sufficient to defray the expense of the register, and no honest man could object to appear in an authorised list which might be published like the Post-office

Directory. Both classes of partnerships would then stand on a just footing. If the capital embarked by *many*, though limited as to some of them, carried more weight than the unlimited liability of a *few* partners, success would follow, but not otherwise. The great bulk of retail trades would still probably be carried on by individuals on their own resources and responsibility, and the alteration of the law would not affect them. By the extension of trade and commerce, which would naturally follow the increase of capital, the Public must necessarily be benefited.

On the question, whether capitalists should be allowed to lend money to traders at a rate of *interest*, and agents and servants to receive *salaries*, *varying with the profits* of the business, without liability as partners, the Commissioners appear to be divided in opinion; yet a Committee of the House of Commons, by their report of 8th July, 1851, recommended that loans should be permitted at a rate varying with the profits, without partnership liability, but postponing the payment of such loans till the other creditors were satisfied.

If we understand the Commissioners aright, they would be willing that charters should be granted, at a moderate expense, to all companies having in view as well the *benefit of the Public* as the profit of the partners or shareholders. The instances given sufficiently show that, on this principle, a very large amount of limited capital might be invested. Indeed, where the undertaking is an extensive one, it is difficult to conceive how there can be private or individual profit without public benefit. Suppose a public brewery were projected competing with the great London brewers, might not the regulations under which a charter would be granted, effectually provide for some important advantages to the Public, and especially the poorer classes, and thus bring the projected company within the principle acknowledged in the report?

There may, indeed, be a limited partnership, even according to the present law, where the parties dealing with the firms are sufficiently cognizant of the fact. Thus, a purchase might be made of a large quantity of merchandise, corn, wine, oil, or tallow, to be paid for in certain proportions by three or more merchants, and none of them could be called upon for the payment of more than their share of the contract price. It is acknowledged that shipping companies, insurance companies, and many

other associations are properly conducted on the principle of limited liability Partnerships. In such concerns one of the partners may have a single 100*l.* share, another five, others 10 or 20 or more, and no one complains of the injustice, danger, or impropriety of such arrangements. Why should not the principle be extended to the working of mines and patents, whether of large or small importance, and to all undertakings requiring a capital of a given amount?

Perhaps, in the first instance, the alteration of the law should be confined to partnerships requiring 1,000*l.* to be immediately embarked, and a liability to the extent of 2,000*l.* more, to be apportioned in shares of not less than 100*l.* each. Thus, 10 persons might unite in a profitable enterprise, and register the amount to which each would render himself liable. The persons dealing with such a firm would probably know whether the capital was equal to the exigencies of the case, and act accordingly. If they gave credit for the machinery, goods, or materials required in the business, what complaint could there justly be, if the means of payment were confined to the particular amounts subscribed by each partner? They give credit or not, as they deem expedient; and for the most part there is greater certainty, that the several separate sums will be forthcoming than that the gross amount will be paid by a smaller number of partners of unlimited liability.

Mr. Bramwell, one of the Commissioners, in the paper in which he states the grounds of his dissent from the Commissioners, and his reasons for supporting the proposed change in the law,<sup>3</sup> recommends the following course to be adopted:—

1st. That persons be allowed, as of right, to form partnerships limiting the liability of one or more or all of the partners.

2nd. That they be allowed to do so by private agreement among themselves, on registering their names, place, and nature of business, term of partnership, and capital subscribed by the limited partners.

3rd. That where the liability of all the partners is to be limited, the partnership should be incorporated on registration.

4th. That the partnership name should be used, and in such way as to indicate the limited liability.

5th. That money may be lent and services rendered, to be paid for by a portion of the profits.

<sup>3</sup> See p. 198, *ante*.

On the whole, we are of opinion that the law should be altered under such safeguards as Mr. Bramwell has suggested, and within such limits as it may be deemed expedient to prescribe, sufficiently to test the value of the principle, before applying it more extensively.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts of the present Session printed in the present Volume, with an Analysis to each, will be found at the following pages:—

- Income Tax, cc. 17, 24, pp. 46, 134, *ante*.
- Commons' Inclosure, c. 9, p. 64.
- County Court Extension, c. 16, 121.
- Registration of Bills of Sale, c. 36, p. 216.
- Warwick Assizes, c. 35, p. 218.
- Attendance of Witnesses, c. 34, p. 235.
- Evidence in Ecclesiastical Courts, c. 47, p. 254.
- Commons' Inclosure (No. 2), c. 48, p. 254.
- Cruelty to Animals, c. 60, p. 275.
- Ecclesiastical Jurisdiction, c. 65, p. 276.
- Highway Rates, c. 52, p. 276.
- Turnpike Trusts' Arrangements, c. 51, p. 276.
- Admiralty Court, c. 78, p. 295.
- Borough Rates, c. 71, p. 298.
- Acknowledgment of Deeds by Married Women, c. 75, p. 299.
- Stamp Duties, c. 82, p. 317.
- Court of Chancery, c. 100, p. 334.
- Bankruptcy, c. 119, p. 335.
- Real Estate Charges, c. 112, p. 339.
- Common Law Procedure Act, 1854, c. 125, pp. 356, 376.

### USURY LAWS REPEAL.

17 & 18 VICT. c. 90.

Acts, &c., named in Schedule repealed; s. 1.

Transactions previous to passing of this Act not to be affected; s. 2.

Legal or current rates of interest to mean the same as if this Act had not passed; s. 3.

Not to affect the law as to pawnbrokers; s. 4.

The following are the Title and Sections of the Act:—

An Act to repeal the Laws relating to Usury and to the Enrolment of Annuities.

[10th August, 1854.]

Whereas it is expedient to repeal the laws at present in force relating to usury: Be it enacted as follows:

1. The several Acts and parts of Acts made in the Parliaments of England and Scotland, Great Britain and Ireland, mentioned in the Schedule hereto, and all existing laws against usury, shall be repealed.

2. Provided always, that nothing herein contained shall prejudice or affect the rights or remedies of any person, or diminish or alter the liabilities of any person, in respect of any Act done previously to the passing of this Act.

3. Where interest is now payable upon any contract, express or implied, for payment of the legal or current rate of interest, or where upon any debt or sum of money interest is now payable by any rule of law, the same rate of interest shall be recoverable as if this Act had not been passed.

4. Provided always, that nothing herein contained shall extend or be construed to extend to repeal or affect any Statute relating to Pawnbrokers, but that all laws touching and concerning pawnbrokers shall remain in full force and effect, to all intents and purposes whatsoever, as if this Act had not been passed.

### SCHEDULE REFERRED TO BY THE FOREGOING ACT.

*Acts and Parts of Acts of the Parliaments of England, Great Britain, and the United Kingdom of Great Britain and Ireland.*

37 Hen. 8, c. 9.—The whole of an Act passed in the 37 Hen. 8, intituled "A Bill against Usury."

13 Elis. c. 8.—The whole of the Act passed in the 13 Elis. intituled "An Act against Usury."

21 Jac. 1, c. 17, made perpetual by 3 Car. 1, c. 4, s. 5.—So much of an Act passed in the 3 Car. 1, as enacts that an Act passed in the 21 Jac. 1, intituled "An Act against Usury," be made perpetual.

12 Car. 2, c. 13.—The whole of an Act passed in the 12 Car. 2, intituled "An Act for the restraining the taking of excessive Usury."

Confirmed by 13 Car. 2, Stat. 1, c. 14.—So much of an Act passed in the 13 Car. 2, intituled "An Act for confirming an Act intituled 'An Act for encouraging and increasing of Shipping and Navigation,' and several other Acts, both public and private, mentioned therein," as confirms the hereinbefore-mentioned Act of the 12th of the same reign.

12 Anne, Stat. 2, c. 16.—The whole of an Act passed in the 12 Anne, intituled "An Act to reduce the Rate of Interest, without any Prejudice to Parliamentary Securities."

53 Geo. 3 c. 141.—The whole of an Act passed in the 53 Geo. 3, intituled "An Act to repeal an Act of the 17 Geo. 3, intituled 'An Act for registering the Grants of Life Annuities, and for the better Protection of Infants against such Grants, and to substitute other Provisions in lieu thereof,'" except so much thereof as repeals the said Act of the 17 Geo. 3.

3 Geo. 4, c. 92.—The whole of an Act passed

in the 3 Geo. 4, intituled "An Act to explain an Act of the 53 Geo. 3, respecting the Enrolment of Memorials of Grants of Annuities."

7 Geo. 4, c. 75.—The whole of an Act passed in the 7 Geo. 4, intituled "An Act to explain an Act of the 53 Geo. 3, respecting the Enrolment of Memorials of Grants of Annuities."

5 & 6 Wm. 4, c. 41.—So much of an Act passed in the session of Parliament holden in the 5 & 6 Wm. 4, intituled "An Act to amend the Law relating to Securities given for Considerations arising out of gaming, usurious, and other illegal Transactions," as relates to Securities given for Considerations arising out of usurious Transactions.

13 & 14 Vict. c. 56.—The whole of an Act passed in the session of Parliament holden in the 13 & 14 Vict., intituled "An Act to continue the Act for exempting certain Bills of Exchange and Promissory Notes from the Operation of the Usury Laws."

*Acts of the Parliament for Scotland.*

An Act of the 11th Parliament of James 6, c. 52, "It is not lessum to take the greater annual rent for the 100 poundes nor 10 poundes, or five bolls victual."

An Act of the 14th Parliament of James 6, c. 222, "For Punishment of Committers of Usury."

An Act of the 15th Parliament of James 6, c. 251, "It is not lessum to take mair annual Rent or Profit nor Ten for the Hundreth."

An Act of the 16th Parliament of James 6, c. 7, "Explication of the Acts of Parliament against Ocker and Usury."

An Act of the 23rd Parliament of James 6, c. 28, "Anent taking of annual Rent beforehand to be Usurie."

*Acts of the Parliament of Ireland.*

An Act of the 10 Charles 1, Secs. 2, c. 22, intituled "An Act against Usury."

An Act of the 2 Anne, c. 16, intituled "An Act for reducing of Interest of Money to Eight per Cent. for the future."

An Act of the 3 Geo. 1, c. 12, intituled "An Act for reducing the Interest of Money to Seven per Cent."

An Act of the 5 Geo. 2, c. 7, intituled "An Act for reducing the Interest of Money to Six per Cent."

**BRIBERY ACT.**

17 & 18 VICT. c. 102.

Repeal of Acts in the Schedule; s. 1.

Bribery defined; s. 2.

Bribery further defined. Penalty; s. 3.

Treating defined. Penalty; s. 4.

Undue influence defined. Penalty; s. 5.

Names of offenders to be struck out of register, and inserted in separate List; s. 6.

No cockades, &c., to be given at elections. Penalty; s. 7.

Voters not to serve as special constables during elections; s. 8.

Penalties, how to be recovered; s. 9.

Costs and expenses of prosecutions; s. 10.

Returning officer to give Notice of election; s. 11.

In cases of private prosecutions, if judgment be given for the defendant, he shall recover costs from the prosecutor; s. 12.

Prosecutor not to be entitled to costs unless he shall have entered into a recognizance to conduct prosecution and pay costs; s. 13.

Limitation of actions; 14.

Power to returning officers to appoint election auditors; s. 15.

Bills, &c., to be sent in within one month to candidate or right to recover barred; s. 16.

Bills, &c., received within one month to be sent in to election auditor; s. 17.

No payments to be made except through election auditor; s. 18.

Tender and payment into Court by election auditor; s. 19.

Copy of judgment and statement of payments made in satisfaction to be sent to auditor; s. 20.

Consent of auditor necessary before settling action; s. 21.

Candidate to pay personal expenses and expenses of advertising; s. 22.

Refreshments to voters on the days of nomination or polling declared illegal; s. 23.

No person to pay expenses of elections, except to candidate or election auditor; s. 24.

Candidates and agents may make payments before day of election; s. 25.

Account of election expenses to be made out by election auditor; s. 26.

Election auditor to keep accounts in some convenient place which shall be open to inspection; s. 27.

Election auditor to publish abstract of such accounts; s. 28.

Returning officer to appoint new election auditor in case of death, &c.; s. 29.

Moneys, &c., to be handed over to new election auditor; s. 30.

Appointment and notification of agents; s. 31.

Nomination of absent candidate's expenses; s. 32.

Payments before passing of Act; s. 33.

Election auditor, how paid; s. 34.

In actions for penalties, parties, &c., to be competent witnesses; s. 35.

Candidate declared guilty of bribery in-



capable of being elected during Parliament then in existence; s. 36.

Short Title; 37.

Interpretation of terms; s. 38.

Duration of Act; s. 39.

The following are the Title and Sections of the Act:—

An Act to consolidate and amend the Laws relating to Bribery, Treating, and undue Influence at Elections of Members of Parliament. [10th August, 1854.]

WHEREAS the Laws now in force for preventing corrupt practices in the election of members to serve in Parliament have been found insufficient: and whereas it is expedient to consolidate and amend such Laws, and to make further provision for securing the freedom of such elections: be it enacted, as follows:—

1. The several Acts of Parliament mentioned in the Schedule A. hereto annexed shall be repealed to the extent specified concerning the same Acts respectively in the third column of the said schedule.

2. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly:

b. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or to endeavour to procure, any money, or valuable consideration, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of such voter having voted or refrained from voting at any election:

2. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote, or refrain from voting, or shall corruptly do any such Act as aforesaid, on account of any voter having voted or refrained from voting at any election:

3. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election:

4. Every person who shall, upon or in consequence of any such gift, loan offer, promise, procurement, or agreement, procure or en-

gage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election:

5. Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election:

And any person so offending shall be guilty of a misdemeanor, and in Scotland of an offence punishable by fine and imprisonment, and shall also be liable to forfeit the sum of 100*l.* to any person who shall sue for the same, together with full costs of suit: provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses *bona fide* incurred at or concerning any election.

3. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:

1. Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any election:

2. Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or to refrain from voting, at any election:

And any person so offending shall be guilty of a misdemeanor, and in Scotland of an offence punishable by fine and imprisonment, and shall also be liable to forfeit the sum of 10*l.* to any person who shall sue for the same, together with full costs of suit.

4. Every candidate at an election, who shall corruptly by himself, or by or with any person, or by any other ways or means on his behalf, at any time, either before, during, or after any election, directly or indirectly give or provide, or cause to be given or provided, or shall be accessory to the giving or providing, or shall pay, wholly or in part, any expenses incurred for any meat, drink, entertainment, or provision to or for any person, in order to be elected, or for being elected, or for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote at such election, or on account of such person having voted or refrained from voting, or being about to vote or refrain from voting, at such election, shall be deemed guilty of the offence of treating, and shall forfeit the sum of 50*l.* to any person who shall sue for the same,

with full costs of suit; and every voter who shall corruptly accept or take any such meat, drink, entertainment, or provision, shall be incapable of voting at such election, and his vote, if given, shall be utterly void and of none effect.

5. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make use of, or threaten to make use of, any force, violence, or restraint, or inflict or threaten the infliction, by himself or by or through any other person, of any injury, damage, harm, or loss, or in any other manner practise intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who shall, by abduction, duress, or any fraudulent device or contrivance, impede, prevent, or otherwise interfere with the free exercise of the franchise of any voter, or who shall thereby compel, induce, or prevail upon any voter, either to give or to refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence, and shall be guilty of a misdemeanor, and in Scotland of an offence punishable by fine or imprisonment, and shall also be liable to forfeit the sum of 50*l.* to any person who shall sue for the same, together with full costs of suit.

6. Whenever it shall be proved before the revising barrister that any person who is or claims to be placed on the list or register of voters for any county, city, or borough has been convicted of bribery or undue influence at an election, or that judgment has been obtained against any such person for any penal sum hereby made recoverable in respect of the offences of bribery treating, or undue influence, or either of them, then and in that case such revising barrister shall, in case the name of such person is in the list of voters, expunge the same therefrom, or shall, in case such person is claiming to have his name inserted therein, disallow such claim; and the names of all persons whose names shall be so expunged from the list of voters, and whose claims shall be so disallowed, shall be thereupon inserted in a separate list, to be entitled "The List of Persons disqualified for Bribery, Treating, or undue Influence," which last-mentioned list shall be appended to the list or register of voters, and shall be printed and published therewith, wherever the same shall be or is required to be printed or published.

7. No candidate before, during, or after any election shall in regard to such election, by himself or agent, directly or indirectly, give or provide to or for any person having a vote at such election, or to or for any inhabitant of the county, city, borough, or place for which such election is had, any cockade, ribbon, or other mark of distinction; and every person so giving or providing shall for every such offence forfeit the sum of 2*l.* to such person as shall sue for the same, together with full costs of suit; and all payments made for or on ac-

count of any chairing, or any such cockade, ribbon, or mark of distinction as aforesaid, or of any bands of music or flags or banners, shall be deemed illegal payments within this Act.

8. No person having a right to vote at the election for any county, city, borough, or other place shall be liable or compelled to serve as a special constable at or during any election for a member or members to serve in Parliament for such county, city, borough, or other place, unless he shall consent so to act; and he shall not be liable to any fine, penalty, or punishment whatever for refusing so to act, any statute, law, or usage to the contrary notwithstanding.

9. The pecuniary penalties hereby imposed for the offences of bribery, treating, or undue influence respectively shall be recoverable by action or suit by any person who shall sue for the same in any of her Majesty's Superior Courts at Westminster, if the offence be committed in England or Wales, and in any of her Majesty's Superior Courts in Dublin if the offence be committed in Ireland, and in or before the Court of Session if the offence be committed in Scotland, and not otherwise.

10. It shall be lawful for any Criminal Court, before which any prosecution shall be instituted for any offence against the provisions of this Act, to order payment to the prosecutor of such costs and expenses as to the said Court shall appear to have been reasonably incurred in and about the conduct of such prosecution: provided always, that no indictment for bribery or undue influence shall be triable before any Court of Quarter Sessions.

11. For the more effectual observance of this Act, every returning officer to whom the execution of any writ or precept for electing any member or members to serve in Parliament may appertain or belong shall, in lieu of the proclamation or notice of election heretofore used, publish or cause to be published such proclamation or notice of election as is mentioned in Schedule B. to this Act, or to the like effect.

12. In case of any indictment or information by a private prosecutor for any offence against the provisions of this Act, if judgment shall be given for the defendant he shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information, such costs to be taxed by the proper officer of the Court in which such judgment shall be given.

13. It shall not be lawful for any Court to order payment of the costs of a prosecution for any offence against the provisions of this Act, unless the prosecutor shall, before or upon the finding of the indictment or the granting of the information, enter into a recognisance, with two sufficient sureties, in the sum of 200*l.* (to be acknowledged in like manner as is now required in cases of writs of certiorari awarded at the instance of a defendant in an indictment), with the conditions following; that is to say, that the prosecutor shall conduct

the prosecution with effect, and shall pay to the defendant or defendants, in case he or they shall be acquitted, his or their costs.

14. No person shall be liable to any penalty or forfeiture hereby enacted or imposed, unless some prosecution, action, or suit for the offence committed shall be commenced against such person within the space of one year next after such offence against this Act shall be committed, and unless such person shall be summoned or otherwise served with writ or process within the same space of time, so as such summons or service of writ or process shall not be prevented by such person absconding or withdrawing out of the jurisdiction of the Court out of which such writ or other process shall have issued; and in case of any such prosecution, suit, or process as aforesaid, the same shall be proceeded with and carried on without any wilful delay.

15. Whereas it is expedient to make further provision for preventing the offences of bribery, treating, and undue influence, and also for diminishing the expenses of elections: be it enacted, that within six days after the passing of this Act the returning officers of the city of Canterbury, the boroughs of Cambridge, Kingston-upon-Hull, Maldon, and Barnstaple, and once in every year, in the month of August, the returning officer of every county, city, and borough shall appoint a fit and proper person to be an election officer, to be called "Election Auditor or Auditor of Election Expenses," to act at any election or elections for and during the year then next ensuing, and until another appointment of election auditor shall be made; and such returning officer shall, in such way as he shall think best, give public notice of such appointment in such county, city, or borough; provided, that any person appointed an election auditor may be re-appointed as often as the returning officer for the time being shall think fit; and that every person who shall be an election auditor on the day appointed for any election shall continue to be the election auditor in respect of such election until the whole business of such election shall be concluded, notwithstanding the subsequent appointment of any other person as election auditor; and every election auditor upon his appointment shall make and sign before the returning officer the following declaration:

"I [A. B.] do solemnly and sincerely promise and declare, that I will well and truly and faithfully, to the best of my ability in all things, perform my duty as election auditor, according to the provisions of 'The Corrupt Practices Prevention Act, 1854.'"

And every election auditor wilfully doing any act whatever contrary to the true intent and meaning of such declaration shall be deemed guilty of a misdemeanor, and in Scotland of an offence punishable with fine and imprisonment.

16. All persons, as well agents as others, who shall have any bills, charges, or claims upon any candidate for or in respect of any

election shall send in such bills, charges, or claims within one month from the day of the declaration of the election to such candidate, or to some authorised agent of such candidate acting on his behalf, otherwise such persons shall be barred of their right to recover such claims, and every or any part thereof: provided always, that in case of the death within the said month of any person claiming the amount of such bill, charge, or claim, the legal representative of such person shall send in such bill, charge, or claim within one month after obtaining probate or letters of administration, or confirmation as executor, as the case may be, or the right to recover such claim shall be barred as aforesaid.

17. Every candidate shall, by himself or his agent in that behalf, within three months after the day of the declaration of the election, or within two months after any bill, charge, or claim has been sent in by the legal representative of any deceased creditor, as herein-before provided, send in to the election auditor for payment all such bills, charges, or claims (except as herein-after excepted) as have been sent in to such candidate within the one month herein-before specified from the day of the declaration of the election, or after the granting of probate or letters of administration, or confirmation as executor, as the case may be: provided always, that the candidate shall, by himself or his agent as aforesaid, at the time of his sending in any such bill, charge, or claim, state to the election auditor whether he admits the whole amount of such bill, charge, or claim, or if not the whole then how much thereof, if any, he admits to be correct: provided also, that in case of the wilful default of the candidate, by himself or his agent as aforesaid, in sending in all such bills, charges, or claims, or in making such statement at the time of sending in such bills, charges, or claims, he shall be liable to a penalty of 20*l.*, and to a further penalty of 10*l.* for every subsequent week of wilful default or neglect in sending in all such bills, charges, or claims, or in making such statement, to be recovered by any person who will sue for the same, together with full costs of suit: provided always, that in case any such candidate shall be absent from the United Kingdom at the time of such election, he shall send in to the election auditor for payment any such bills, charges, or claims as aforesaid within one month after his return to the United Kingdom, which shall be of the same force and effect as if the same had been sent in as herein provided.

18. No payment of any bill, charge, or claim, or of any money whatever, for or in respect of any election, or the expenses thereof (except as herein excepted), shall be made by or by the authority of any candidate, except by or through such election auditor, and any payment made by or by the authority of any candidate otherwise than as herein provided shall be deemed and taken to be an illegal payment, and upon proof thereof such candidate shall forfeit the sum of 10*l.*, with double the amount

of such illegal payment, and full costs of suit, to any person who will sue for the same: provided always, that it shall be lawful for any candidate, by himself or his agent, to name any banker through whom alone such bills, charges, or claims, or money, as aforesaid, shall be paid by the election auditor, and in that case the election auditor shall pay such bills, charges, and claims by cheques drawn on such banker, to be countersigned by the candidate, or some person on his behalf specially appointed for that purpose.

19. If the election auditor, by the authority of any candidate, tenders or offers to pay any sum in respect of any bill, charge, or claim sent in as herein-before provided, such tender shall be taken for all purposes to be the tender of such candidate, and may, in any action or other proceeding brought against such candidate to recover the amount of such bill, charge, or claim, be pleaded as such, or otherwise be made available according to the proceedings of the Court in which such action or other proceeding is brought or carried on; and if such plea is pleaded, or if it shall be deemed advisable for any other reason to pay the money into Court in any action or other proceeding brought against a candidate in respect of any liability alleged to have been incurred by him at such election, the election auditor may, at the request of the candidate, and by leave of one of the Judges of the Superior Courts of Common Law at Westminster, or of any one of the Judges of her Majesty's Superior Courts at Dublin, or of any one of the Judges of the Court of Session in Scotland, as the case may be, pay into Court the sum required; and such payment into Court by the election auditor shall, for the purposes of such action, be deemed and taken to be and may be pleaded as payment into Court by the candidate himself: provided always, that on any issue or hearing in reference to any such tender or payment of money into Court, it shall not be necessary to prove the appointment of the election auditor.

20. Nothing in this Act contained (except as herein specially provided) shall be taken to limit the right of any creditor to bring any action or otherwise to proceed against a candidate for or in respect of any expenses connected with the election; and if in any such action or proceeding final judgment be obtained against the candidate, such candidate shall forthwith send to the election auditor a copy or certificate of such judgment; and when and as the moneys recovered by the said judgments, or any part thereof, shall be paid or satisfied by such candidate, or shall be obtained under or by virtue of any execution, the said candidate shall thereupon forward to the election auditor a statement of the moneys so paid or obtained in respect of such judgment.

21. No candidate shall be allowed to compound or settle any action or other proceeding brought against him in respect of any expenses alleged to have been incurred by him in or about the election, or to confess judgment in

such action or proceeding, without the consent of the election auditor.

22. The personal expenses of any candidate, and the expenses of advertising in newspapers with reference to any election, shall be defrayed by the candidate himself, or by his authority, but a full and true account of the sums so paid in respect of the said advertisements shall, as soon as conveniently may be, be made out to the best of his ability, and rendered to such election auditor by such candidate, and the amount of such account shall be included in the general account of the expenses incurred at any election to be made out and kept by such election auditor as hereinafter provided.

23. And whereas doubts have also arisen as to whether the giving of refreshment to voters on the day of nomination or day of polling be or be not according to law, and it is expedient that such doubts should be removed: be it declared and enacted, that the giving or causing to be given to any voter on the day of nomination or day of polling, on account of such voter having polled or being about to poll, any meat, drink, or entertainment by way of refreshment, or any money or ticket to enable such voter to obtain refreshment, shall be deemed an illegal act, and the person so offending shall forfeit the sum of 40s. for each offence, to any person who shall sue for the same, together with full costs of suit.

24. No person shall pay or agree to pay any expenses of any election, or any sum of money whatever, in order or with a view to procure or promote the election of any person to serve in Parliament, save to the candidate at such election, or to or under the authority of the election auditor, other than as excepted and allowed by this Act; and every person who shall pay or agree to pay any such expenses or money as aforesaid, save as aforesaid, shall become liable to a penalty of fifty pounds, and of double the money so paid or agreed to be paid, to be recovered in an action of debt by any one who shall sue for the same; provided, that if upon the trial of any action to recover any such penalty or penalties it shall appear to the Judge who shall try the same that any such payment shall have been made or agreed to be made without any corrupt or improper intention, such Judge may if he shall think fit, reduce such penalty or penalties to any sum not less than 40s. and may also, if he shall think fit, direct that the plaintiff shall not be entitled to costs of such action: provided also, that no expenses of or relating to the registration of electors, and no subscriptions or contributions *bona fide* made to or for any public or charitable purpose, shall be deemed election expenses within the meaning of this Act: provided also, that in any action to recover any penalty under this Act it shall be lawful to the Court in which such action shall be brought, or any Judge thereof, if they or he shall think fit, to order that the plaintiff in such action shall give security for costs, or that all proceedings therein shall be stayed.

25. Any candidate, and his agents by him

appointed in writing, according to the provisions of this Act, may, at any time before the day of nomination, pay any lawful and reasonable expenses in respect of the election which he or they shall *bond fide* believe fit and proper to be paid, in ready money, and the payment of which cannot conveniently be postponed; provided, that the candidate and his agents shall, upon or before the day of nomination make out to the best of his ability, and deliver to the election auditor, a full, true, and particular account of all such payments, with the names of the persons to whom they have been made, signed by such candidate or his agents respectively, and no payment so made shall be a legal payment within this Act unless such account thereof shall be duly rendered to the election auditor.

26. The election auditor shall, as soon as he conveniently can make out a full and true account of all the expenses incurred at the election, specifying therein every sum of money paid to him or paid by him or by his authority on behalf of each candidate, and of all sums claimed, although the same shall not have been allowed or paid, and every sum which has been paid into Court as aforesaid or recovered by judgment against such candidate, and to whom, by name, such payment was made, and for what particular debt or liability; and the election auditor shall include in such general account the amount of the sums paid by each candidate for advertisements, and he shall specify therein the total amount of expenses incurred by each candidate; and the account, when so made out, shall be duly signed by him: provided always, that, if it shall be found necessary, the election auditor may from time to time make out a supplementary account or accounts, which shall be made and abstracted in the manner herein provided with reference to the first general account.

27. The election auditor shall keep all accounts which shall come to his hands in some fit and convenient place, and shall, at all rea-

sonable and convenient times, submit the same to the inspection of the candidates and their agents, and permit them to take copies of the same or of any part thereof, upon request, and when such general account as aforesaid shall be so made out and signed by him, he shall keep the same in some fit and convenient place; and such general accounts shall be open to the inspection of any person, and copies thereof or of any part thereof shall be furnished to any person at all reasonable and convenient times, upon request, such person paying a fee, at the rate of 1s. for every 200 words, to a copying clerk, for the same; and when the election auditor shall have concluded the business of any election he shall deliver over all accounts in his hands to the clerk of the peace in counties, and to the town clerk or other officer performing any of the duties of town clerk in cities and boroughs, and to the sheriff clerk in counties in Scotland, who shall allow them to be inspected by any person, on the payment of 1s., and shall furnish copies, of the same or of any part thereof on the payment of a fee, at the rate of 1s. for every 200 words, to the copying clerk, provided always, that for any copy so furnished the fee shall in no instance be less than 1s., and shall deliver over to the candidates respectively the balance of all monies, if any, and all vouchers in his hands, except any vouchers appertaining personally to himself.

28. The election auditors shall also, as soon as he conveniently can, insert or cause to be inserted an abstract of such account, signed by him, in some newspaper published or circulating in the county or place where such election is held; and such abstract of account shall specify the amount of each of such bills, charges, or claims admitted to be correct, or claimed and objected to, and the names of the parties to whom the same shall have been paid or are due, or by whom the same have been claimed respectively.

[To be continued.]

## DIFFERENCES IN THE MERCANTILE LAWS OF ENGLAND, IRELAND, AND SCOTLAND.

### England and Ireland.

#### PRIVATE PARTNERSHIPS.

##### Their Nature.

1. A private partnership of two or more persons is not recognised in law separately from the associated individuals who compose it.

2. A private partnership cannot sue or be sued by any of its members, except in a Court of Equity.

3. Two private partnerships, having one or more member or members in common, cannot sue each other, except in a Court of Equity.

4. A joint adjudication in bankruptcy against co-partners vests in the assignees, and renders subject to distribution under it, not only the joint property of the partnership, but also the

### Scotland.

#### PRIVATE PARTNERSHIPS.

##### Their Nature.

1. A private partnership, or company, of two or more partners, is a *separate person* in law.

2. A private partnership can sue and be sued by any of its members.

3. Two private partnerships having one or more members in common may sue each other.

4. A company may be sequestrated without the individual partners being sequestrated.

**England and Ireland.**

**PRIVATE PARTNERSHIPS.**

*Their Nature.*

separate property of the individual partners, subject, however, as to the latter, to the satisfaction in full of their separate debts.

5. In an action at Common Law by or against a private partnership, all the partners must be individually named and served with process, if the defendant insists. This, however, he must do in such a time and with such formalities as render it impossible when the partners are numerous.

6. In suits in equity by or against ordinary partnerships, every member must be named, and (if a defendant) must be served with process, unless where the number of partners is so great as to render this impracticable, in which case a few may sue or be sued as representing the general body of partners.

*Powers of Partners.*

7. Pending an action or suit by co-partners, one or more of them may gratuitously release the defendant from the whole cause of the action or suit.

And a defence valid as against one of the co-partners is available as against all of them in an action by the co-partners.

8. In general a partner cannot bind his co-partners by instrument under seal.

*Set off.*

9. In a proceeding against co-partners as such, or against one or more of the co-partners individually, a debt due from the plaintiff to one or more of the co-partners in the former case, or to all the co-partners as such in the latter case, cannot be set off against the claim of the plaintiff.

*Failure.*

10. A partnership which is not subject to the bankrupt law, and is not within the Winding-up Acts, cannot have, or be compelled to have, all its property distributed by process of law for the rateable benefit of all its creditors.

11. Upon the bankruptcy of co-partners, their separate estates are applicable to the payment of their respective separate debts in priority to partnership debts.

*Dissolution.*

12. A partner, taking the benefit of the Insolvent Acts is, as well as his being adjudged bankrupt, a ground of dissolution of the partnership.

13. A dormant partner, on retiring from the partnership, in order to avoid liability for the subsequent engagements of his co-partners,

**Scotland.**

**PRIVATE PARTNERSHIPS.**

*Their Nature.*

5. In suits by or against private partnerships,

If the name of the company comprise the names of persons only, the company itself may sue or be sued by that name, and no member need be named or served;

6. But if the company be anonymous, *i. e.*, have no denomination by what is descriptive of its object, the names of three, at least, of the members must be used along with the descriptive name of the company.

*Powers of Partners.*

7. Pending a suit by a company, one of the partners cannot release the defendant.

And a defence, although it would be valid against one of the partners, would not be available against the company and the other partners.

8. In general a partner may bind his co-partners in any form in which he can bind himself.

*Set off.*

9. In a proceeding against a company, or against one or more of the co-partners, a debt due from the pursuer to one or more of the co-partners in the former case, or to the company in the latter case, may be set off against the claim of the pursuer. 2 Bell's Comm. 664.

*Failure.*

10. A company, although it should not be sequestrated, may become notour bankrupt, whereby all creditors, using diligence against it within a definite period, are enabled to rank *pari passu*.

11. Upon the sequestration of co-partners, their separate estates are applicable to the payment, *pari passu*, of their respective separate debts, and of so much of the partnership debts as the partnership estate is insufficient to satisfy.

The creditor in a company debt, in claiming upon the sequestrated estate of a bankrupt partner, must deduct from the amount of his claim the value of his right to draw payment from the company's funds, and he is ranked as a creditor only for the balance.

*Dissolution.*

12. Notour bankruptcy without sequestration is not a ground of dissolution of the partnership.

13. A dormant partner on retiring from the partnership in order to avoid liability for the subsequent engagements of his co-partners,

*England and Ireland.**Dissolution.*

must give special notice of his retirement to those persons then having relations with the partnership who were aware of his connexion with it; but he need not give notice to any other persons either specially or by public advertisement. *Heath v. Sansom*, 4 B. & Ad. 172.

## JOINT-STOCK COMPANIES.

*Joint-Stock Companies Registration Acts.*

1. All commercial joint-stock companies with transferable shares, and all partnerships consisting of more than 25 members, and all insurance companies formed since 1st November, 1844, not under any special Act of Parliament or letters patent (except mining partnerships on the cost-book principle, and anonymous partnerships in Ireland under 21 & 22 Geo. 3, c. 46, s. 2), must be registered, and must make periodical returns, pursuant to 7 & 8 Vict. c. 110, amended by 10 & 11 Vict. c. 78; 7 & 8 Vict. c. 110, ss. 63, 64.

2. Upon complete registration, every such company becomes incorporated by the name of the company set forth in its deed of settlement, and for the purpose of carrying on the trade or business for which it was formed, but only according to the provisions of 7 & 8 Vict. c. 110, and 10 and 11 Vict. c. 78, and of its deed of settlement, and for the purpose of suing and being sued, and of taking and enjoying the property and effects of the company; s. 25.

3. Previous to *provisional* registration, there is a prohibition under a penalty against the taking any money for shares allotted or to be allotted, and the issuing in the name or on the behalf of the company, any writing to denote a right, or claim, or preference, or promise to any shares, and the advertising the existence or proposed formation of the company, and the making any contract for or on behalf of the intended company; s. 24.

Previous to *complete* registration, there is a prohibition against making calls, except for the purpose of making deposits not exceeding 10s. in the 100s., and against purchasing, contracting, or holding lands, and against entering into contracts for services, works, or stores, except conditionally, or for matters required for the establishing of the company; s. 23.

There is a prohibition under a penalty against the disposal of shares by sale or mortgage previous to *complete* registration of the company, and registration of the owner as the shareholder; s. 26.

4. Previous to *complete* registration, a deed of settlement must be executed by at least one-fourth in number of the persons who have then become subscribers, holding at least one-fourth of the maximum number of shares in the capital of the company.

Such deed of settlement must be formed in accordance with the provisions of 7 & 8 Vict. c. 110.

*Scotland.**Dissolution.*

must give special notice of his retirement to all persons then having relations with the partnership, whether they were or were not aware of his connexion with it, and also public notice by advertisement. *Hay v. Mair*, Jan. 27th, 1809, Fac. Coll.; 2 Bell's Comm. 643.

## JOINT-STOCK COMPANIES.

1. By the common law, joint-stock companies with transferable shares are legal without the authority of the Legislature, or the Crown, or the Board of Trade, and without registration; with the exception of banking companies established since the 9th August, 1845, in virtue of 9 & 10 Vict. c. 75 (extending to Scotland the operation of 7 & 8 Vict. c. 113).

And Scottish joint-stock companies having a place of business in any other part of the United Kingdom, 7 & 8 Vict. c. 110, s. 2.

2. Companies can be incorporated by special Act of Parliament, or by letters patent only.

A joint-stock company not incorporated cannot sue or be sued by its assumed name, unless three or more of the partners be joined with the company itself in the suit.

3. The several matters mentioned as being prohibited in England and Ireland by 7 & 8 Vict. c. 110, are not illegal in Scotland; companies established in Scotland, unless they have a place of business in some other part of the United Kingdom, being excepted from the operation of that Statute; s. 2.

4. Joint-stock companies, the capital whereof is divided or agreed to be divided into shares, and so as to be transferable without the express consent of all the co-partners, and companies consisting of more than 25 members may be formed without a deed of settlement, if they have not a place of business in any other part of the United Kingdom, as well as in Scotland.

*England and Ireland.*

**JOINT-STOCK COMPANIES.**

*Joint-Stock Companies Registration Acts.*

It must set forth the name, purpose, and place or places of business of the company, and the names of the then subscribers and directors; and must provide, amongst other things:

1. For the holding of meetings of the company and the proceedings thereat;
2. For the direction and execution of the affairs of the Company and the recording of its proceedings;
3. For the amount of original capital and of proposed additional capital, if any, and its division into shares and the mode and time of payment;
4. The extent and mode of borrowing money and contracting debts;
5. The duration of the company and the mode or condition of its dissolution.

*S. 7 and Schedule A.*

A register of shareholders must be kept and be open to inspection; ss. 49, 50.

Certificates of shares under the common seal are *prima facie* evidence of ownership; ss. 51, 52.

Transfers of shares are authorised and regulated; s. 54.

The recovery by the company of instalments on shares is prohibited; s. 55.

5. A judgment, decree, or order against a company completely registered under 7 & 8 Vict. c. 110, has no effect against a former shareholder of the company after the expiration of three years next after he shall have ceased to be a shareholder; s. 66.

6. Shares in joint-stock companies transferable without the concurrence of the other co-partners can be transferred by deed under seal only. 7 & 8 Vict. c. 110, s. 54.

*Companies' Clauses' Consolidation Act.*

7. S. 14. Shares are transferable by deed under seal only.

*Winding up.*

8. Every partnership, association, and company, whereof the partners or associates are not less than seven in number, and whether incorporated or unincorporated, may be compulsorily wound up and dissolved without suit, by summary proceedings in Chancery, if it shall have committed certain specified acts of bankruptcy, or in certain other specified events, or if any other matter or thing shall be shown which in the opinion of the Court shall render it just and equitable that the company should be dissolved. 11 & 12 Vict. c. 45; 12 & 13 Vict. c. 108.

In certain cases companies may be compulsorily wound up in Bankruptcy, and the Crown may determine incorporated companies. 7 & 8 Vict. c. 111 (England); 8 & 9 Vict. c. 98 (Ireland).

*Scotland.*

**JOINT-STOCK COMPANIES.**

5. Persons who were members of a joint-stock company with transferable shares at the time when a particular debt or engagement was contracted by the company, and were personally liable for such debt or engagement, continue liable to diligence in respect of that debt or engagement indefinitely, though they cease to be members by transfer of their shares.

6. Shares in unincorporated joint-stock companies transferable without the concurrence of the other co-partners may be transferred without a deed under seal, if not otherwise prescribed by the contract of co-partnership.

*Companies' Clauses' Consolidation Act.*

7. S. 14. Shares are transferable by deed with or without seal.

*Winding up.*

8. If a company be carrying on business in Scotland in certain occupations which would render an individual liable to sequestration, and one or more of the partners have been rendered notour bankrupt for a company debt, such company can be wound up by sequestration.

There are no Winding-up Acts in operation in Scotland. But on the application of all or any of the partners, the Court of Session will appoint a judicial factor, with power to wind up the affairs of the company, and to sue in the name of the company.



*England and Scotland.*

9. Limited liability on the part of individual members for partnership engagements can be enjoyed only when it is expressly stipulated for in the particular engagement, or when it is conferred by special authority of Parliament or of the Crown, or of the Board of Trade.

*Ireland.*

9. Partnerships, one or more of the members of which (being non-acting) are to enjoy limited liability for partnership engagements, may be formed, without the direct sanction of Parliament or the Crown, or the Board of Trade, under the authority and subject to the regulation of the Anonymous Partnership Act, 21 & 22 Geo. 3, c. 46 (Irish).

**“A WARNING VOICE TO SOLICITORS.”****“TOUCHING AND CONCERNING” THEIR BILLS OF COSTS.**

UNDER this title, a pamphlet has been recently published, appertaining to “the Bills of Costs and Legal Accounts of Solicitors,” with many practical suggestions, by Mr. John Simmons, of Gracechurch Street, who describes himself as “Law and General Accountant and Bills of Costs Draughtsman.” As might be anticipated, he considers “that Solicitors, as a rule, are about the worst accountants and book-keepers in the world.” If they were not somewhat exposed to this reflection, and if a considerable number of them did not disdain to make themselves masters of a good system of account-keeping, the occupation of Mr. Simmons and his numerous brethren would not flourish to the extent it does.

But the charge against solicitors is not confined to the neglect of keeping properly their own accounts, or understanding the accounts of others which come before them as solicitors in the Courts of Chancery and Bankruptcy, but they are not altogether unjustly blamed for omitting to take care of their own personal interests by keeping proper and sufficient materials for speedily and accurately making out their bills of costs. Mr. Simmons observes, that this neglect—

“To the non-professional world it may, at first sight appear incredible, it being generally supposed that there is no body of men so thoroughly alive to their own interest as solicitors. Nevertheless (he says), that whilst every nerve is strained by the solicitor to protect the interest and welfare of his client, the due reward of the toil and anxiety attending the progress of long and complicated legal operations is, in many, probably the great majority of cases, sadly neglected by him.

“And this observation is more especially applicable to solicitors of large practice, both in town and country; for he whose practice is very limited, and who has it consequently in his power to give personal attention to the most minute details, is not so liable to losses of this nature, although, from want of experi-

ence in particular branches, he also may, and probably often does, commit mistakes and incur losses.”

“The evil arises from various causes, amongst which one of the chief is, that the preparation of the professional bills of costs and accounts is frequently delayed in the expectation that opportunities will present themselves (which they seldom or never do) for the principal to give his attention to the subject—in the Long Vacation, for instance!!! Whereas postponement after postponement too often takes place, until circumstances arise which render it imperative that the task should be entered upon; and when commenced it is often found, owing to the insufficient time afforded to it, that the bills of costs are so loosely and incorrectly made out as to contain less by one-third than the amount which the solicitor is properly entitled to receive.”

“These losses are, no doubt, mainly attributable to delay in making out the bills, and to the omission of important and fairly chargeable items; also to the omissions arising from carelessness in the examination of the papers, which are too often intrusted to clerks quite incompetent to the task of investigating and settling them. The losses incurred in this way would be found to amount, even to a solicitor in moderate practice, to a considerable annual sum; but to a solicitor of extensive practice, to something enormous, and, until investigated, incredible.”

“The *Long Vacation* is set apart for the task of settling bills of costs; but when that time comes the principal finds that the bodily and mental labour and exertion devoted to business for so many previous months have rendered it imperatively necessary that he should lay in a stock of health for the winter campaign. Thus year after year slips by, and the bills of costs grow older and less profitable, and the wearied professional man becomes more and more anxious for that sweet retirement to which so many look forward, but which comes to so comparatively few. And when, towards the close of a business of magnitude and long-standing, the oldest and best clients begin to question, and question leads to misunderstanding, and misunderstanding to litigation, it is often discovered, when too late, that the work of years has to be reviewed; transactions which, it had been supposed, had been long since consigned to the ‘tomb of all the Capulets’ are disinterred, a *post mortem* examination taken, and a reference is made either to a Court of Equity, a jury, or an arbitrator.

This leads sometimes to other unpleasant results, both in the loss of large sums of money which are required to be refunded, and the odium attaching to the party who had been so unmindful of his duty, of his own interests and those of his clients, as to leave affairs of many years' standing in an unsettled condition. Just at the time when the veteran solicitor had hoped to enjoy his long coveted and honourable retirement, he is, through such means, thus subjected not only to the loss of a considerable portion of his fortune, but to observations which, whilst substantially undeserved, are of a painful and disparaging description."

On the importance of preparing *Yearly Balance Sheets*, Mr. Simmons contends, that it is

"Scarcely more difficult for the solicitor to value and estimate his assets, than it is for the merchant and tradesman to take stock. And what (he asks) can be more desirable than to ascertain, from time to time, the progress made in the shape of profit and loss in the business transacted?—whether the income have increased or decreased,—and again, whether the expenses incurred in the management of a business be such as the profits will bear, or whether the profit or the greater portion of it have not been eaten up in expenses, and the lion's share devoured by the employed, leaving but a small portion to the employer? A regular balance-sheet, governed; let me repeat, by system and principle, will supply this information, which is especially important where the business is large, or where a *partnership exists*, as through it the partners can, either yearly or half-yearly, according to the periodical intervals which they may choose as most convenient, discern at a glance the relation between their assets and their liabilities, and form a correct estimate of their real income and expenditure."

Some just observations are also made by Mr. Simmons on estimating the value of an attorney's practice, for the purpose of admitting a *Partnership*, or disposing of the whole. Unintentional misrepresentations are often made of the net annual income.

"The unfortunate mistakes and misconceptions have in such cases arisen from there not existing any real knowledge of the value of the *net income*, whilst the absence of such necessary knowledge has been owing, in its turn, to the want of proper investigation of accounts, little more than a  *cursory estimate* having been made from a careless examination of the books and accounts, without the trouble having been taken to go into a detailed statement, or to prove the actual net profit of the business for such a series of years as would furnish both parties with a trustworthy and satisfactory view of the state of the facts."

Mr. Simmons having in these and other

passages enlarged on the necessity of making regular entries, preparing bills of costs, and periodically stating the results, proceeds to the subject of *Office Expenses*. He observes, that

"Some solicitors are inspired by an unhappy vanity for seeing a large display of clerks, to impart a '*business-like*' appearance to an office, many of the clerks being either not wanted or of very little use; other solicitors keep up an unnecessary staff without knowing anything whatever as to whether it is necessary or not, or whether the '*net profits*' of the business will bear such an outlay. But a great and leading cause of extravagant and unnecessary expenditure of this description is, that solicitors do not '*take stock*;' that they do not institute a thorough periodical examination of their accounts, or have a yearly or half-yearly balance-sheet prepared. If this were done, the '*profit and loss*' account would soon open the eyes of many who now repose in ill-grounded confidence, and indeed prove to them that, what with the '*office expenses*,' the losses occasioned by the imperfect mode of making out bills of costs and their non-delivery and collection, and the loss of interest upon a large capital which remains year after year upon the books—it would prove to many solicitors, I say, that little, comparatively speaking, finds its way into the pockets of the *principal*, although he has imagined, from the influx of business daily entering his office, that he has been clearing a considerable income. Where his belief is founded in misconception, the process of undeception might be disagreeable for the moment, but it would be salutary and beneficial in the end.

"Looking round the Profession, how large a proportion of its oldest members will be still found toiling in its ranks—still tugging at the labouring oar—attorneys and solicitors who, during their professional career, have seen vast alterations in the practice of the Courts of Law and Equity—men who have amassed fortunes, and actually expended and lost them again in the course of their practice, and who still toil on—men who have, over and over again, had to learn their Profession during a whole half century of change upon change, whilst no sooner has one code of laws come into operation than another succeeds, in the interminable attempt to '*assimilate*' the law of this country to that of others, wherein *what is called* '*cheap and speedy law*' is said to exist."

## RECORDERSHIP OF BRIGHTON.

It has been resolved to confer a grant of Quarter Sessions upon Brighton, which has long been sought for by the inhabitants of that increasing and prosperous locality. *Edwin James, Esq., Q. C.*, of the Home Circuit, will be the first Recorder of Brighton under this new arrangement.

## LAW OF COSTS.

**SEPARATE ORDER BY MARRIED WOMAN TO SUE WITHOUT NEXT FRIEND IN FORMA PAUPERIS.**

AN order was obtained *ex parte* by a married woman, for leave to file a bill and sue *in forma pauperis*, without a next friend.

On a motion to discharge the order for irregularity, and to take the bill off the file, the *Master of the Rolls* said:—"Before disposing of this case, I was desirous of ascertaining the opinion of the other branches of the Court, and this course of practice adopted there. \* \* \*

"I am of opinion that the order is irregular and cannot stand. The case of *Wellesley v. Wellesley*, 16 Sim. 1, which is very briefly reported, is no authority for the present order; for in that case Lady Mornington having filed a bill in the ordinary and usual course, filed a supplemental bill for the purpose of prosecuting her suit. No one would act as her next friend, and she applied to the Court to prosecute it *in forma pauperis*, and the order was granted.

On the authority of *Wellesley v. Wellesley*, and the order made by me in this case, Mr. C. M. Roupell applied to the Lords Justice in *Ex parte Hakewill*, 3 De G., M'N. & G. 116, for leave to a married woman to present a petition to obtain access to her children, without a next friend, and they granted the order. That, however, was an application under Mr. Justice Talfourd's Act, to obtain access to her children, and the Lords Justices, after considerable doubt, appear to have directed that to be done, but Vice-Chancellor *Kinderley* doubted whether he had any such authority. That was a different case to the present. The ordinary course of proceedings in cases like the present is this:—The bill is filed by the married woman by her next friend, in the ordinary course, and she then makes her application to the Court (supported by the usual affidavit) for leave to sue *in forma pauperis* without a next friend, but such an application cannot be made *ex parte*, but only upon notice served in the regular way. The object of this is, to give the other parties to the suit an opportunity of being heard on the matter.

"Besides, in this case, there is no pending matter in which an affidavit can be made as a foundation for the application, and such an affidavit can only be made in some pending cause or matter.

"Upon every view of the case, therefore, the

order is irregular, and must be discharged, but without costs, as the Court ought originally to have refused it." *Page v. Page*; 40 *re Page*, 16 Beav. 588.

## POINTS IN EQUITY PRACTICE.

**SEPARATE PROCEEDING BY CO-PLAINTIFFS.**

A DECREE was made in a suit to which there were several co-plaintiffs, for taking the accounts, but they had not been completed. One of the co-plaintiffs moved for liberty to take a state of facts into the Master's office, and proceed thereon apart from the rest,—the *Master of the Rolls* said:—"Mr. Hawkins cannot take a course of proceeding different and apart from the other plaintiffs, for the consequences would be, that their proceedings might be totally inconsistent. When persons undertake the prosecution of a suit, they must make up their minds whether they will become co-plaintiffs; for if they do, they must act together. I cannot allow one of several plaintiffs to act separately from, and inconsistently with, the others." Refuse the motion with costs. *Wedderburn v. Wedderburn*, 17 Beav. 168.

## LAW OF VENDOR AND PURCHASER.

**RESCINDING CONTRACT AFTER DEFAULT OF PURCHASER.**

AFTER a decree against a purchaser for the specific performance of an agreement, the defendant made default in payment of the purchase-money: *Held*, that the vendor was entitled to rescind the contract. *Foligno v. Martin*, 16 Beav. 586.

**PAYMENT INTO COURT OF PECUNIARY CHARGE ON ESTATE.**

*Held*, that the purchaser of an estate subject to a pecuniary charge, is not entitled to pay the amount of the charge into Court under the Trustee Relief Acts, 10 & 11 Vict. c. 96, and 12 & 13 Vict. c. 74. *In re Buckley's Trust*, 17 Beav. 110.

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

GENERAL MEETING AT LEEDS.

To the Editor of the Legal Observer.

DEAR SIR,—Will you allow me, through your columns, to give notice to the scattered members of the Profession, that it is intended

to hold a general meeting of attorneys and solicitors at Leeds, on the 18th of October next, at one for two precisely. The meeting has been called for the same objects as those placed before the large meeting which was held at Derby in 1854, and which was reported in the *Legal Observer*, vol. 44, pages 501 and 518, viz., to consider the present condition and prospects of the Profession, and to devise the best means of obtaining increased support for, and thus giving increased efficiency to, the Association.

The local arrangements will be made by the Leeds Law Society, which is known to be one of the most active and influential of the Provincial Societies.

It is desired, as far as possible, to make the meeting a satisfactory representation of the Profession throughout the country, and with this view the Committee are anxious that every member of the Profession should consider himself personally invited to attend, and that wherever it can be arranged, the members of the Profession residing in any one town or locality should appoint one or more of their number to attend the meeting as delegates.

W. SHAW, *Secretary*.

### PRESTON BOROUGH COURT.

It was this day (19th September) ordered by her Majesty in Council, that within one month after such order shall have been published in the *London Gazette*, the provisions of the Common Law Procedure Act, 1852, and the rules made and to be made in pursuance thereof, except sections 97, 99, and 120 of the said Act, rules 57, 81 to 111, both inclusive, 115 to 117 both inclusive, 123 to 124 both inclusive, 173 and 175; and except such parts of the said Act and rules as relate to special juries, terms and pleadings between the 10th day of August and the 24th day of October in any year, shall apply to the Court of Record of the borough of Preston called the Court of Pleas.

### NEWCASTLE-UPON-TYNE BOROUGH COURT.

It was this day (13th September) ordered by her Majesty in Council, that within one month after such order shall have been published in the *London Gazette*, the provisions of the Common Law Procedure Act, 1852, and the rules made and to be made in pursuance thereof, shall apply to the two Courts of Record of the borough of Newcastle-upon-Tyne, called respectively the Burgess Court, and the Non-Burgess Court.—From the *London Gazette* of Sept. 19.

## SELECTIONS FROM CORRESPONDENCE.

### EXAMINATION OF ATTORNEYS AND SOLICITORS.

To the Editor of the *Legal Observer and Solicitors' Journal*.

SIR,—Your first Article in the *Legal Observer and Solicitors' Journal*, of the 9th inst., is upon a subject of very great importance, and, as I think I see manifested in it the progressive spirit of the age, I venture to express the hope that the subject treated of will be considered temperately and with great caution. We must take care, in our zeal for the honour of our Profession, that we do not run into the opposite extreme to the former indifference and apathy on the same subject;—that we do not impose burdens too grievous to be borne, and expect more from future candidates for admission into our ranks than ought reasonably to be required. In the first place, I would observe that the general examination suggested in the above article is open to objection from the fact of its being too general—the field is too wide—I would have the arena in some degree circumscribed and defined. For instance, in English History, I would have a certain period of that history stated, or some “one vol.” History of England mentioned as required to be studied; for what person would like to be examined in “Hume and Stowell’s” History of England?

In mathematics, too, I think an examination in a certain number only, say the first five books of Euclid, should be considered sufficient. And, as to Latin and Greek, it should be specified in what books or portions of books candidates would be examined. I think the student should know the nature and extent of the studies which will be required of him in order that he may prepare for the ordeal through which he will have to pass, and have the possibility of ascertaining from time to time his progress and prospects of ultimate success. I believe this is, to a considerable extent, the practice at the Universities.<sup>1</sup>

Again, as to science,—this is a word of too general a meaning. It should be known by the student what science he is expected to know something about, for there are a great many:—there is the science of music, geometry, and astronomy; there is the science of divinity and of medicine.<sup>2</sup> It certainly should be some science calculated to assist and further him in the acquisition of the knowledge of his Profession, and the duties he will be called upon to fulfil: I might name logic, as a lawyer should be a good logician.

Next, as to ethics, the student might be ex-

<sup>1</sup> No doubt the examiners will give due notice of the extent of the examination.

<sup>2</sup> It is not at present proposed to examine in Greek or Mathematics.

<sup>3</sup> We are not aware that any of these sciences will form subjects of examination.—Ed.

amined as to his knowledge of, and acquaintance with, the Proverbs of Solomon and our Saviour's Sermon on the Mount (and no improper examination either). But, I fear in this the examiners would labour in great uncertainty as to coming at the real character of the candidate. I think the certificate of some one acquainted with the moral character of the candidate (his previous master, for instance) should be obtained and suffice; and if such previous master would not give one, the cause of his refusal should be submitted to, and discussed before, a competent tribunal.

In conclusion, I fully appreciate the good intentions of yourself and the other advocates for a more extended education and examination of candidates for admission to our Profession, but I would caution both you and them not to tax too much the minds of our successors, but to remember the labour and study which they will have necessarily to undergo in order to become acquainted with the Profession itself by which they hope to obtain their livelihood, especially in these days when the laws in every department are constantly changing.

A COUNTRY ATTORNEY.

[We are obliged to our Correspondent for these remarks, and concur generally in their propriety.—Ed.]

#### DOCTORS' COMMONS.

Considering the immense increase of wills enrolled in the Prerogative Court, and the consequent increase of trouble in searches, I wish to draw your attention to the matter, in the hope that the Incorporated Law Society will forthwith take the matter up and effect an *alphabet, compiled dictionarywise*, which would save an infinite deal of trouble.

CIVIS.

#### ENFRANCHISEMENT OF COPYHOLDS.

Very large copyhold estates of inheritance are held of manors belonging to the Bishop of London in right of the see, at quit-rents of 4d. or 6d.

The yearly value of these estates are, say 100*l.*, and the See very considerably and liberally agrees to enfranchise in consideration of the payment of 100*l.*, one year's full rent, the lord being only entitled to a fine of two years' quit-rent of 4d. or 6d.

Is not the time arrived for placing all enfranchisements under the Copyhold Commissioners or some public body?

CIVIS.

#### EXAMINATION OF ATTORNEYS AND SOLICITORS.

SIR,—Your able article on the above subject in the *Legal Observer* for September 9 (coupled with your known promptitude in answering the Queries of Subscribers), has induced me to put the following question for your solution. *When do you think it possible for the examinations in general literature to come into operation?* If gentlemen who were articled under the 120*l.* stamp are to be treated

with an *educational* as well as *property* qualification, it seems to work a manifest injustice. Surely four or five years' notice must be given us in fairness, for Hume and Smollet cannot be read in a few months, and, I presume, that something beyond a superficial knowledge will be necessary. A "competent knowledge" of the six subjects named in page 353, together with the legal examination, will at all events be more than I, for one, can undertake to acquire during the remaining two years of my term.

INVENTUS.

[Our Correspondent may rely, that no regulation will be made, which would have an *ex post facto* operation.—Ed.]

#### ADVICE TO COPYING CLERKS.

In this railway-speed age, there is much carelessness in copying papers. When writing, do not flourish nor make long tops nor long tails. Place the "letters" in each word close together, but place the "words" a little distance from each other, which will prevent the writing from looking black and heavy. Let the sloping or inclination of every letter be alike, so that no letter shall be tumbling down while another is standing upright or sloping a different way. Beware of beginning a word with a capital, unless it be proper to do so: Practise a quick running hand at all opportunities. When writing, let the body and chest be kept upright and square to the front of the desk or table, keeping the left arm and elbow close to the side of the body, without letting them loll with the body and head on the desk or table. To acquire a good style of writing, practise writing capitals and small letters, but do not proceed to form any succeeding capital or letter until a habit has been acquired of forming the previous capitals or letters.

AN OLD PRACTITIONER.

[We believe that the recent orders for printing bills in Chancery were partly occasioned by the defective manner in which the pleadings for the use of the Court and the Bar were transcribed. It is said that the present Solicitor-General, in one instance, sent his papers to a law stationer to be recopied in the best manner.—Ed. L. O.]

#### QUERIES OF ARTICLED CLERKS.

##### INTERVALS OF SERVICE.

I WAS articled to a solicitor in London, and about the latter end of June last, I left London with the concurrence of my principal to prepare for and attend some causes for trial at the assizes. I remained in the office of my father, who is an attorney, and have attended to his business, with the concurrence of my master. Will the months between June and the present time, on having my articles assigned to my father, reckon as service?

K.

[We think that the time occupied in attending the assizes may properly be reckoned, for the clerk was then engaged in the busi-

ness of the attorney to whom he was articulated ; but as the service must be under written contract, the time subsequently occupied in the father's office before the execution of the contract cannot be reckoned.—Ed.]

#### RENEWAL OR TAKING OUT CERTIFICATE.

I was admitted an attorney in Trinity Term, 1852. After that time I studied some months in a conveyancer's chambers,—then I visited my friends, and since the beginning of this year I have been in the office of solicitors with a view to a partnership. What notice is required to be given to obtain my certificate?

H.

[More than a year having elapsed since admission on the Roll, notice must be given before Term of the application for leave to take out a certificate,—founded on an affidavit of not having practised in the interim ; but if a partnership be agreed upon, a Judge at Chambers will probably grant an order on ten days' notice to the Incorporated Law Society.—Ed.]

### LEGAL MISCELLANEA.

#### ATTORNEY-JUDGES.

To the Editor of the Legal Observer.

SIR,—You, I know, are interested in finding out those Judges who began their career in our branch of the Profession. I have just come across John *Glanville*, a Justice of the Common Pleas, temp. Elizabeth, who, Anthony Wood says, (*Fasti*, p. 64) was "bred an attorney." I think he is the first attorney who attained high judicial rank.

F.

[Besides the recent well-known instance of Lord *Truro*, and the preceding one of Lord *Macclesfield*, who attained the English wool-sack, there was also the example of Lord *Lifford*, who reached the same rank in Ireland,—he commenced practice as an attorney at Coventry.—Ed. L. O.]

### NOTES OF THE WEEK.

#### LAW PROMOTIONS AND APPOINTMENTS.

The Queen has been pleased to direct Letters Patent to be passed under the Great Seal, granting the dignity of a Baronet of the United Kingdom of Great Britain and Ireland unto *John Beverley Robinson*, Esq., C. B., Chief Justice of that part of Her Majesty's province of Canada called Upper Canada, and to the heirs male of his body lawfully begotten.

The same honour has also been conferred upon *Louis Hypolite Lafontaine*, of the city of Montreal, in the county of Montreal, Esq., Chief Justice of that part of her Majesty's province of Canada, called Lower Canada, and to the heirs male of his body lawfully begotten.

The Queen has been pleased to appoint *Joseph Hensley*, Esq., to be Attorney-General ; *Dennis O'Meara*, Esq., to be Solicitor-General, and *William Swabey*, Esq., to be Registrar of Deeds and Keeper of Plans for the Island of Prince Edward.

Mr. *John Callaway*, jun., has been appointed Clerk of the Canterbury County Court (Circuit No. 50), in the room of Mr. George Furley, resigned.

The Lord Chancellor has been pleased to appoint *Matthew Inglett Brickdale*, Esq., Barrister-at-Law, to be Secretary to the Commission for the revision and consolidation of the Statute Law. From the *London Gazette* of 8th Sept.

The Queen has been pleased to appoint *Neville Parker*, Esq., to be a Puisne Judge of the Supreme Court of the Province of New Brunswick, with rank and precedence in the said Court next after the Chief Justice.

Her Majesty has also been pleased to appoint *Thomas D. Archibald*, Esq., Barrister-at-Law, to be a Member of the Legislative Council of the province of Nova Scotia.

The Queen has been pleased to appoint *Thomas Henry Travis*, Esq., to be a Police Magistrate and Justice of the Peace for the borough of Kingston-upon-Hull.—From the *London Gazette* of Sept. 15.

#### ELECTION AUDITORS.

Appointed under the New Bribery Bill.

Devonport, Mr. John Nicholas Bennett.  
 Lambeth, Mr. John Clutton.  
 London, Mr. James Anderton.  
 Liverpool, Mr. Thomas Carson.  
 Manchester, Mr. William Heron.  
 Salford, Mr. Charles Gibson.  
 Cheshire, Mr. John Hostage.  
 Chester, Mr. John Jones.  
 Gloucestershire, Mr. John W. Burrup.  
 Gloucester, Mr. R. H. Carter.  
 Hertfordshire and Hertford, Mr. Stephen Soames.  
 Truro, Mr. E. Sharp.  
 Durham (City), Mr. R. Hammond.  
 Wakefield, Mr. S. F. Harrison.  
 Winchester, Mr. E. C. Faithfull.  
 Southampton, Mr. J. Witt.  
 Aylesbury, Mr. T. W. Tindal.  
 Bury St Edmunds, Mr. J. Sparke.  
 Lynn, Mr. T. G. Archer.  
 Buckinghamshire, Mr. T. W. Tindal.  
 Bedford, Mr. J. W. Wyatt.  
 Worcester, Mr. W. S. P. Hughes.  
 Abingdon, Mr. W. Pemberton.  
 Tewkesbury, Mr. Thomas Brookes.  
 Yarmouth, Mr. E. R. Aldred.  
 East Retford, Mr. H. Hall.  
 Leicester, Mr. W. Billson.  
 Chatham, Mr. G. B. Acworth.  
 Rochester, Mr. J. Lewis.  
 Newport, Isle of Wight, Mr. James Eldridge.  
 Northampton and County, Mr. John Becke.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

**Master of the Rolls.***In re Thurgood, ex parte Clark.* Aug. 5, 1854.**SOLICITOR.—TAXATION OF COSTS WHERE RETAINER DISPUTED.**

An order of course had been obtained for the taxation of the bill of costs of solicitors for soliciting a local Act of Parliament, the expenses being borne by subscription, and the petitioner having subscribed 5*l*. The solicitors brought an action against him to recover the whole amount, whereupon the petitioner obtained the order for taxation: Held, that the application must be special, and the order for a taxation would be made, with liberty to question the retainer, and to restrain the action upon an undertaking to pay what should be found due.

Palmer and Schoys appeared in support of this motion to discharge an order of course which had been obtained by Mr. Clark for the taxation of the bill of costs of Messrs. Thurgood in soliciting a local act to regulate the rating of the parish and borough of Saffron Walden. It appeared that the expenses were subscribed for, and that the petitioner had subscribed 5*l*., and upon Messrs. Thurgood bringing an action against him for the whole of their bill, he had paid that amount into Court and obtained this order as of course for a taxation.

Lloyd and Southgate, contra.

The Master of the Rolls said, that the Court had jurisdiction, under the 6 & 7 Vict. c. 73, to make the order, but that the question should be brought specially before the Court in each case. An order would be made, with liberty to question the retainer and to restrain the action, upon an undertaking to pay what should be found due, but if the petitioner would not accept the order, the order of course must be discharged, without costs.

**Vice-Chancellor Rinderley.***Heath v. Chapman.* July 18, 22, 1854.**REQUEST FOR SUPERSTITIOUS USES.—INVALIDITY OF, UNDER STATUTE.**

Held, that a bequest in trust to pay certain annual sums for the celebration and performance of masses and requiems for the repose of the testator's soul, and of the poor and dead of the congregations of A. and B., is void, under the 2 & 3 Wm. 4, c. 115.

THE testator, Signor Dragonetti, by his will, gave a sum of 3,000*l*. to trustees in trust, to pay certain annual sums for the celebration and performance of masses and requiems for the repose of his soul, and of the poor dead of the congregations of St. Marks, Venice, and of St. Mary's, Moorfields.

Bailey, Anderson, Renshaw, Ellison, Elderton, and Wickens, for the several parties.

The Vice-Chancellor said, that the Act of the 2 & 3 Wm. 4, c. 115, permitting gifts to be made for the support of Roman Catholic churches and schools, did NOT legalize bequests

for the performance of masses for the dead, and which were, therefore, still within the operation of the Statute as a superstitious use. The bequest was void and went into the residue.

**Vice-Chancellor Stuart.***In re Sims' Trust.* June 5, 1854.**WILL.—CONSTRUCTION.—LEAVING ISSUE.—GRANDCHILDREN.**

The testator gave a sum of stock in trust, after the determination of a life estate, to be divided between four parties, and he directed that in case either of them should happen to die in his wife's lifetime without leaving lawful issue, the share of the one so dying should go to the survivors, and if leaving lawful issue, then the share to such issue—the issue of each to take the share to which the parent would have been entitled: Held, that the grandchildren of a party dying without leaving children in the wife's lifetime were not entitled.

THE testator, by his will, gave a sum of stock upon the determination of the life estate of his wife in the income thereof, in trust to be divided between his brother, niece, and two nephews, and he directed that in case either of them should happen to die in his wife's lifetime without leaving lawful issue, the share of the one so dying should go to the survivors, and if leaving lawful issue, then the share to such issue—the issue of each to take the part or share to which the parent would have been entitled. The question now arose, whether the grandchildren of a legatee who died in the lifetime of the wife without leaving children, were entitled.

The Vice-Chancellor said, that they were not entitled, having regard to the use of the word parent coupled with that of issue.

**Vice-Chancellor Wood.***Oppenshaw v. Robinson.* July 18, 1854.**PAYMENT OF DEBTS OUT OF REAL ESTATE.—WILL.—CONSTRUCTION.—TITLE.**

The testator, by his will, directed his debts to be paid out of the personal estate, and the deficiency (if any) to be made up out of the realty. The executor sold part of the real estate: Held, on special case under the 13 & 14 Vict. c. 35, that he could show a good title.

THIS was a special case under the 13 & 14 Vict. c. 35, from which it appeared that the testator, by his will, had directed his debts to be paid out of the personal estate, and the deficiency (if any) to be made up out of the realty. The executor having sold a part of the estates, a question arose, whether he could make out a good title.

Bird for the plaintiff; Little for the defendant.

The Vice-Chancellor held, that the executor could make a good title.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

SATURDAY, SEPTEMBER 30, 1854.

### REVISION AND CONSOLIDATION OF THE STATUTE LAW.

A new Commission has been issued by her Majesty "for the purpose of consolidating the Statute Laws of the Realm." The Commissioners are 18 in number, viz., the Lord Chancellor; Lord Lyndhurst; Lord Brougham; Lord Wrottesley; Lord Campbell; Lord Chief Justice Jervis; Lord Chief Baron Pollock; Mr. Baron Parke; Mr. Moncrieff, Queen's Advocate for Scotland; Mr. Walpole, Q.C.; Mr. Napier, Q.C.; Vice-Chancellor Wood; the Attorney-General; the Solicitor-General; the Attorney-General for Ireland; the Solicitor-General for Ireland; the Solicitor-General for Scotland; and Mr. Bellenden Ker. Mr. M. J. Brickdale has been appointed Secretary to the Commission.

It will be recollected that under the authority of the Lord Chancellor, Mr. Bellenden Ker, assisted by Mr. Arstey, Mr. Brickdale, Mr. Coode, and Mr. Rogers, have been engaged during the last 12 months in collecting and arranging numerous materials with a view to the consolidation of the Statutes, which must essentially assist the Commissioners in the execution of their task. We have already stated some of the results of the labours of those *quasi* or preliminary Commissioners, particularly the first Report of Mr. Bellenden Ker, and the introductory observations of Mr. Coode. We shall now proceed to review the second and third Reports, addressed to the Lord Chancellor by Mr. Bellenden Ker, of the 27th of January and 31st of May last.

The object of the Lord Chancellor, who originated this important measure, appears to be, 1st, a complete revision of the Statutes, and the settlement by *declaratory Acts of all doubtful points* relating to the

existing Statute Law; and, 2ndly, the *consolidation of the Statutes*, reducing each subject into a separate chapter or act.

Our Statute Book, which contains the Laws made by the Legislature during no less than six centuries, has, on various subjects, been altered repeatedly, and now comprises an enormous amount both of repealed and obsolete enactments. It is, undoubtedly, a hardship that, in order to possess a collection of the Statutes we must buy 39 quarto volumes; but it is contended that the duty of Parliament is merely to make good Laws, and that the publication of selections and abridgments belongs to the public. The mischief, however, of that course is, that the supply being left to private individuals, they naturally confine their views to what they consider safe and profitable speculations. Their collections of Statutes comprise such enactments as are deemed useful to the larger classes, whether of the community in general or the Profession, and therefore likely to afford a good return for the labour and capital invested. The Notes and Annotations which accompany these selections of Statutes, are also framed with a view to the pecuniary result, and are executed with various and unequal degrees of care, learning, and completeness.

We think, therefore, that the Government should at certain convenient periods compile and publish, under appropriate divisions and subdivisions, in separate volumes, the whole of the existing Statute Law,—omitting the expired, obsolete, and repealed Acts, or parts of Acts; and in the result presenting the Laws then in actual force. Mr. Ker, however, seems to doubt the practicability of such an authorised *State* edition of the Statutes: he says—

"When Lord Bacon made his celebrated proposal to prepare a revised edition of the



Statutes, reasons existed to justify such a proposal which I think are not applicable now; it was probable that no such edition was then possible except at the public expense; and besides, the difference in authority between absolute legislative enactment and a work executed by the greatest lawyers in the country, and published under the sanction of a Royal Commission, was not perhaps then felt so clearly as it would be now; so that such an edition would at least have had the advantage of being looked on as an authoritative exposition of the law. I presume it can hardly be necessary to show that a really authorised edition of the Statutes,—that is, an edition enacted by Parliament, declaring both affirmatively and negatively that those, and those only, are the Statutes now in force,—is quite impracticable; besides other objections, it is to be observed that the propriety of inserting or omitting particular Statutes in preparing a selection is, in most cases, a matter not of absolute certainty but of editorial discretion; and that an edition from which no Statute is to be omitted, except those of which it can be said without the least doubt, that it may for all possible purposes be treated as if it had never existed, would not be much less bulky than the 39 quarto volumes now complained of."

It is observed, however, by Mr. Ker, that there is a revision which the Legislature may be said to owe to the Public:—

"I mean a revision for the purpose of ascertaining what Statutes there still are (in Lord's Bacon's words) 'sleeping and not of use, but yet snaring and in force;' as well as what Statutes there are which, owing to the careless language of subsequent legislation, cannot be said on strict principles of construction to be repealed, though generally considered, and probably intended not to be in force; and what Statutes there are of which the meaning is uncertain. Of the former class (the obsolete) there are no doubt many, though not, I believe, many of much practical importance; of the other kind the number is at first sight very large, although probably in many cases it is only *difficult*, and not after sufficient examination really doubtful, whether a statute has been repealed by, or is inconsistent with, a subsequent enactment or not. However, it cannot be denied that the existence of any such cases is a reproach; and if I do not recommend the immediate removal of such a reproach it is chiefly because in the course of consolidation, which I recommend for immediate adoption, the greater part of the desired result may be incidentally effected, and the task of effecting the remainder very considerably diminished."

The difficulty of the undertaking is no doubt very great. An accurate list of obsolete Statutes, not expressly repealed, might, indeed, be made; but many of the obsolete Acts, though not formally repealed, have been, in fact, rendered inoperative by

subsequent enactments,—so that there would be considerable risk of encumbering the Statute-book with unnecessary matter. On the whole, therefore, Mr. Ker does not deem it expedient to commence such a work at present.

It has been suggested by two of Mr. Ker's colleagues, and others, that Parliament should at least give assistance to any Editor who may make a new Edition of the living law, by passing a comprehensive Statute, enumerating the Laws repealed, expired, or not in force. To this proposition, Mr. Ker offers the following objections:—

"1. That to ask the Legislature to repeal what is not the law at all, is futile, and asking it to do what is no part of its office. 2. That if passed, such an Act would not, after all, be of much practical use, and the points in which it would be most useful would be better provided for in the course of consolidation. 3. That the benefit (which has been much insisted on) of having a chronological list of all the Statutes not in force would only endure for a single session, for the repeals of the next session would not appear in their chronological places. 4. A very great number of the defunct Acts of Parliament are of such a nature that it is not proper to declare either that they are repealed or expired; the only proper course is to let them alone. Such are all Acts which are the foundations of rights or titles, to which it has long ceased to be necessary to appeal, but which, nevertheless, cannot be declared repealed, which would be equivalent (in many cases) to enacting the *contrary*. The proposed Act would, therefore, in a great degree, fail in its object, for it would necessarily leave untouched a vast mass of Statutes which no editor would think it necessary to reprint, but which, nevertheless, are not so absolutely annulled that the Legislature itself may declare them to be for all purposes extinct, as if they had never been."

It is properly observed, that it will not be right to repeal unqualifiedly Acts of a *temporary* nature, because such repeal would have the effect of reversing what has been done under them. Thus, inclosures and exchanges, effected under temporary Acts, would be rendered void; but against this consequence provision could of course be made in the repealing Act, and a schedule might be made of this class of Statutes.

The practical course for effecting the desired result of an improved state of the Statute Law, as recommended by Mr. Belindon-Ker, may be thus stated:—

1st. The *gradual* consolidation, or *re-writing* of the Statutes, combining there-

with such *improvements* as may be suggested and approved. Thus, continuing the process which has been applied to isolated subjects; but proceeding in a careful and uniform manner. By these means a Digest would ultimately be framed of each group of Statutes.

2nd. Preparing or settling Bills for the Government and others, and making reports on such Bills.

3rd. Watching Bills in their progress through the two Houses, and reporting on all alterations which appear to make the enactments inconsistent with themselves or with other branches of the Law, or which otherwise require notice.

The report then sums up the suggestions which have *not* been adopted.

1. That anything in the nature of a complete Digest or consolidation into a Code, either of the Statute Law alone, or of the Statute or Common Law combined, cannot be commenced at present.

2. That it is not advisable at present to publish or enact anything in the nature of what is popularly understood by a revised edition of the Statutes.

3. Nor to attempt to pass a general declaratory Act abrogating all the Statutes already repealed, expired, or otherwise not in force.

4. Nor to prepare any pure Digests or consolidations of the existing Law, not in the form of Bills, but merely for the information of the Legislature and the public, or as *materials* for future Bills; a process which, though not without its utility, would not repay the labour and time which it would require.

We may here add Lord Bacon's proposals for amending the Statute Law:—

"1. The first, to discharge the books of those Statutes, whereas the case, by alteration of time is vanished: as Lombards, Jews, Gauls, half-pence, &c. These nevertheless may remain in the libraries for antiquities, but no reprinting of them. The like of Statutes long since expired and clearly repealed; for if the repeal be doubtful, it must be so propounded to the Parliament.

"2. The next is, to repeal all Statutes which are sleeping and not of use, but yet snaring and in force; in some of those it will perhaps be requisite to substitute some more reasonable law instead of them agreeable to the time; in others a simple repeal may suffice.

"3. The third, that the grievousness of the penalty in many Statutes be mitigated, though the ordinance stand.

"4. The last is, the reducing of concurrent Statutes heaped one upon another to one clear and uniform law:" for which purpose he sug-

gests that "because this part of the work, which concerneth the Statute laws, must of necessity come to Parliament," there should be Commissioners named by such houses, "yet not with a precedent power to conclude, but only to prepare and propound to Parliament."

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts of the present Session printed in the present Volume, with an Analysis to each, will be found at the following pages:—

- Income Tax, cc. 17, 24, pp. 46, 134, *ante*.
- Commons' Inclosure, c. 9, p. 64.
- County Court Extension, c. 16, 121.
- Registration of Bills of Sale, c. 36, p. 216.
- Warwick Assizes, c. 35, p. 218.
- Attendance of Witnesses, c. 34, p. 235.
- Evidence in Ecclesiastical Courts, c. 47, p. 254.
- Commons' Inclosure (No. 2), c. 48, p. 254.
- Cruelty to Animals, c. 60, p. 275.
- Ecclesiastical Jurisdiction, c. 65, p. 276.
- Highway Rates, c. 52, p. 276.
- Turnpike Trusts' Arrangements, c. 51, p. 276.
- Admiralty Court, c. 78, p. 295.
- Borough Rates, c. 71, p. 298.
- Acknowledgment of Deeds by Married Women, c. 75, p. 299.
- Stamp Duties, c. 83, p. 317.
- Court of Chancery, c. 100, p. 334.
- Bankruptcy, c. 119, p. 335.
- Real Estate Charges, c. 113, p. 339.
- Common Law Procedure Act, 1854, c. 125, pp. 356, 376.
- Usury Laws Repeal, c. 90, p. 396.
- Bribery Act, c. 102, p. 397.

### BRIBERY ACT.

17 & 18 VICT. c. 102.

[Concluded from p. 402.]

29. In case the person appointed to act as election auditor should, before his duties herein mentioned are completed, die, resign, or become incapable of acting as such election auditor, it shall be lawful for the returning officer for the time being to appoint some fit and proper person to act as such election auditor in the room of the person originally appointed as aforesaid for the remainder of the then current year of such appointment; and the returning officer shall give public notice of such appointment in the county, city, or borough.

30. All moneys, bills, papers, and documents of and relating to the election which were in the hands or under the control of the election auditor going out of office, dying, resigning, or

becoming incapable of acting as aforesaid, except receipts or vouchers for payments actually made by such election auditor, shall be handed over and transferred to the new election auditor appointed as hereinbefore mentioned; and such new election auditor shall in all respects, or as near thereto as may be, have the same powers and act in the same way as if he had been originally appointed previous to the election: provided always, that it shall be lawful for such new election auditor, at all reasonable times, to have access to and take copies of or extracts from the receipts or vouchers above excepted.

31. Every candidate shall, before or at the nomination, or as soon after as conveniently may be, declare to the election auditor in writing the name or names of his agent or agents for election expenses, who shall be appointed in writing, and that he has not appointed and will not appoint any other agent without in like manner declaring the same to the election auditor, and no other than such agents shall have authority to expend any money or incur any expenses of or relating to the election, in the name or on the behalf of the candidate; and such agents may pay any of the current expenses of the election necessary to be paid in ready money, provided that such agents shall make out, to the best of their ability, and render, from time to time, true and particular accounts to the election auditor of all such payments; and every such agent shall, as soon as conveniently may be after his appointment as aforesaid, make and sign the following declaration:

"I [A. B.], being appointed an agent for election expenses by [X. Y.], a candidate at this election, do hereby solemnly and sincerely declare, that I have not knowingly made, authorised, or sanctioned, and that I will not knowingly make, authorise, or sanction any payment on account of this election, otherwise than through the election auditor, save as excepted and allowed by 'The Corrupt Practices Prevention Act, 1854.'"

32. In case any person shall be proposed and seconded at any election in his absence, and without his previous authority, it shall be lawful to the persons proposing and seconding such person to pay and agree to pay the lawful expenses of the election of such person; and such proposer and seconder having agreed to pay such lawful expenses shall become liable to pay the fees hereby made payable to the election auditor, and pay any of the lawful expenses of such election, in like manner and upon the same terms and conditions as herein provided concerning agents for election expenses appointed in writing by the candidates.

33. If any candidate at any election, or any member hereafter returned to serve in Parliament, shall before the passing of this Act have paid any money for or in respect of any election hereafter to be held, or any expenses thereof, such person shall, to the best of his ability, deliver a full, true, and particular account of such payment or payments to the election auditor.

34. Every such election auditor shall be paid and be entitled to receive, by way of remuneration to him for his services in and about the election, the sum of 10*l.* from each candidate at the election, as and by way of first fee; and a further commission, at the rate of 2*l.* per centum, from each candidate upon every payment made by him for or in respect of any bill, charge, or claim sent in to such election auditor as hereinbefore provided; and the reasonable expenses incurred by the election auditor in the business of the election and the performance of his duties pursuant to this Act shall form part of the election expenses, and shall be paid rateably and proportionably by the candidates respectively.

35. On the trial of any action for recovery of any pecuniary penalty under this Act, the parties to such action, and the husbands and wives of such parties respectively, shall be competent and compellable to give evidence in the same manner as parties, and their husbands and wives, are competent and compellable to give evidence in actions and suits under the Act of the 14 & 15 Vict. c. 99, and "The Evidence Amendment Act, 1853," but subject to and with the exceptions contained in such several Acts: provided always, that any such evidence shall not thereafter be used in any indictment or criminal proceeding under this Act against the party giving it.

36. If any candidate at any election for any county, city, or borough shall be declared by any election committee guilty, by himself or his agents, of bribery, treating, or undue influence at such election, such candidate shall be incapable of being elected or sitting in Parliament for such county, city, or borough during the Parliament then in existence.

37. In citing this Act in any instrument, document, or proceeding, or for any purpose whatsoever, it shall be sufficient to use the expression "The Corrupt Practices Prevention Act, 1854."

38. Throughout this Act, in the construction thereof, except where be something in the subject or context repugnant to such construction, the word "county" shall extend to and mean any county, riding, parts, or division of a county, stewartry, or combined counties respectively returning a member or members to serve in Parliament; and the words "city or borough" shall mean any university, city, borough, town corporate, county of a city, county of a town, cinque port, district of burghs, or other place or combination of places (not being a county as hereinbefore defined) returning a member or members to serve in Parliament; and the word "election" shall mean the election of any member or members to serve in Parliament; and the words "returning officer" shall apply to any person or persons to whom, by virtue of his or their office, under any law, custom, or statute, the execution of any writ or precept doth or shall belong for the election of a member or members to serve in Parliament, by whatever name or title such person or persons may be called; and the words

"revising barrister" shall extend to and include an assistant barrister and chairman presiding in any Court held for the revision of the lists of voters, or his deputy in Ireland, and a sheriff or a sheriff's Court of Appeal in Scotland, and every other person whose duty it may be to hold a Court for the revision and correction of the lists or registers of voters in any part of the United Kingdom; and the word "voter" shall mean any person who has or claims to have a right to vote in the election of a member or members to serve in Parliament; and the words "candidate at an election" shall include all persons elected as members to serve in Parliament at such election, and all persons nominated as candidates, or who shall have declared themselves candidates at or before such election; and the words "Personal expenses," as used herein with respect to the expenditure of any candidate in relation to any election, shall include the reasonable travelling expenses of such candidate, and the reasonable expenses of his living at hotels or elsewhere for the purposes of and in relation to such election.

39. This Act shall continue in force for one year next after the passing thereof, and thenceforth to the end of the then next Session of Parliament.

#### THE SCHEDULE A. ABOVE REFERRED TO.

*Date of Act.—Title of Act.—Extent of Repeal.*

7 Wm. 3. c. 4, A. D. 1695.—An Act for preventing Charge and expense in Elections of Members to serve in Parliament.—The whole Act.

2 Geo. 2, c. 24, A. D. 1729.—An Act for the more effectual preventing Bribery and Corruption in the Election of Members to serve in Parliament.—All the Act, except the 3rd section, prescribing the oath to be taken by returning officers, and except so far as the penalties and provisions of the said Act are applicable to the false taking of such oaths, and the neglect to take the same.

16 Geo. 2, c. 11.—An Act to explain and amend the Laws touching the Elections of Members to serve for the Commons in Parliament for that Part of Great Britain called Scotland, and to restrain the Partiality and regulate the Conduct of Returning Officers at such elections.—So much of the Act as is contained in the 33rd section.

43 Geo. 3, c. 74, A. D. 1803.—An Act for further regulating the Administration of the Oaths or Affirmation required to be taken by Electors of Members to serve in Parliament by an Act passed in the 2nd year of King George the Second, intituled "An Act for the more effectual preventing Bribery and Corruption in the Election of Members to serve in Parliament."—The whole Act.

49 Geo. 3, c. 118, A. D. 1809.—An Act for better securing the Independence and Purity of Parliament, by preventing the procuring or obtaining of Seats in Parliament by corrupt Practices.—The whole Act.

4 Geo. 3, c. 55, A. D. 1823.—An Act to consolidate and amend the several Acts now in force, so far as the same relate to the Election and Return of Members to serve in Parliament for Counties of Cities and Communities of Towns in Ireland.—So much of the Act as is contained in the 44th, 79th, and 81st sections;

7 & 8 Geo. 4, c. 37, A. D. 1827.—An Act to make further Regulations for preventing corrupt Practices at Elections of Members to serve in Parliament, and for diminishing the Expenses of such Elections.—The whole Act.

2 & 3 Wm. 4, c. 65, A. D. 1832.—An Act to amend the Representation of the People of Scotland.—So much of the 26th section of the Act and the Schedule (K.) thereto annexed as relates to the Oath or Affirmation against Bribery to be put to any registered Voter at any Poll or Election.

2 & 3 Wm. 4, c. 88, A. D. 1832.—An Act to amend the Representation of the People of Ireland.—So much of the 54th section of the Act as relates to administering the Oath or Affirmation against Bribery.

5 & 6 Vict. c. 102.—An Act for the better Discovery and Prevention of Bribery and Treating at the Election of Members of Parliament.—So much of the Act as is contained in the 20th and 22nd sections.

#### SCHEDULE B.

No. 1.—*Proclamation to be used in Counties.*

Election of Knight, &c.

THE sheriff of the county of \_\_\_\_\_ day of \_\_\_\_\_ will, at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ now next ensuing, proceed to the election of a knight or knights, member or members [as the case may be] for the county or division of a county. [as the case may be], at which time and place all persons entitled to vote at the said election are requested to give their attendance.

And take notice, That all persons who are guilty of bribery at the said election will, on conviction of such offence, be liable to the penalties mentioned in that behalf in "The Corrupt Practices Act, 1854."

And take notice, That all persons who are guilty of treating or undue influence at the said election will, on conviction of such offence, be liable to the penalties mentioned in that behalf in "The Corrupt Practice Prevention Act, 1854."

*Signature of the proper Officer.*

No. 2.—*Notice of Election in Boroughs.*

City or Borough of \_\_\_\_\_ day of \_\_\_\_\_

In pursuance of a writ received by me \_\_\_\_\_ for electing a Burgess or Burgesses [as the case may be], to serve in Parliament for the city or borough [as the case may be], I do hereby give notice, that I shall proceed to election accordingly on the \_\_\_\_\_ day of \_\_\_\_\_

at o'clock in , when and where all persons concerned are to give their attendance.

And take notice, that all persons who are guilty of bribery at the said election will, on conviction of such offence, be liable to the penalties mentioned in that behalf in "The Corrupt Practices Prevention Act, 1854."

And take notice, that all persons who are guilty of treating or undue influence at the said election will, on conviction of such offence, be liable to the penalties mentioned in that behalf in "The Corrupt Practices Prevention Act."

*Signature of the proper Officer.*

#### YOUTHFUL OFFENDERS.

17 & 18 VICT. c. 86.

On application from voluntary Institution to Secretary of State, inspector to report ;

s. 1.

Juvenile offenders, how to be dealt with ;

s. 2.

Power to Treasury to defray costs of maintenance at reformatory school ; s. 3.

Absconding, or refractory conduct at reformatory school, how to be punished ; s. 4.

Cost of maintenance to be partly recovered from parents, &c. ; s. 5.

For compelling parent or step-parent to support juvenile offenders while remaining in reformatory school ; 59 Geo. 3, c. 12 ; 4 & 5 Wm. 4, c. 76 ; 8 & 9 Vict. c. 83 ; s. 6.

Juvenile offenders may be removed from one reformatory school to another ; s. 7.

Act not to extend to Ireland ; s. 8.

The following are the titles and sections of the Act :

An Act for the better Care and Reformation of Youthful Offenders in Great Britain.

[10th August, 1854.]

Whereas reformatory schools for the better training of juvenile offenders have been and may be established by voluntary contributions in various parts of Great Britain, and it is expedient that more extensive use should be made of such institutions : be it enacted, as follows :—

1. It shall and may be lawful for her Majesty's Secretary of State for the Home Department, upon application made to him by the directors or managers of any such institution, to direct one of her Majesty's inspectors of prisons to examine and report to him upon its condition and regulations, and any such institution as shall appear to the satisfaction of the said Secretary of State, and shall be certified under his hand and seal, to be useful and efficient for its purpose, shall be held to be a reformatory school under the provisions of this Act : provided always, that it shall be

lawful for any of her Majesty's inspectors of prisons to visit from time to time any reformatory school which shall have been so certified as aforesaid ; and if upon the report of any such inspector the said Secretary of State shall think proper to withdraw his said certificate, and shall notify such withdrawal under his hand to the directors or managers of the said institution, the same shall forthwith cease to be a reformatory school within the meaning of this Act.

2. Whenever after the passing of this Act any person under the age of 16 years shall be convicted of any offence punishable by law, either upon an indictment or on summary conviction before a police magistrate of the metropolis or other stipendiary magistrate, or before two or more justices of the peace, or before a sheriff or magistrate in Scotland, then and in every such case it shall be lawful for any Court, Judge, police magistrate of the metropolis, stipendiary magistrate, or any two or more justices of the peace, or in Scotland for any sheriff or magistrate of a burgh or police magistrate, before or by whom such offender shall be so convicted, in addition to the sentence then and there passed as a punishment for his offence, to direct such offender to be sent, at the expiration of his sentence, to some one of the aforesaid reformatory schools to be named in such direction, the directors or managers of which shall be willing to receive him, and to be there detained for a period not less than two years and not exceeding five years, and such offender shall be liable to be detained pursuant to such direction : provided always, that no offender shall be directed to be so sent and detained as aforesaid unless the sentence passed as a punishment for his offence, at the expiration of which he is directed to be so sent and detained, shall be one of imprisonment for 14 days at the least ; provided also, that the Secretary of State for the Home Department may at any time order any such offender to be discharged from any such school.

3. It shall be lawful for the Commissioners of her Majesty's Treasury, upon the representation of one of her Majesty's Principal Secretaries of State, to defray, out of any funds which shall be provided by Parliament for that purpose, either the whole cost of the care and maintenance of any juvenile offender so detained in any reformatory school as aforesaid, at such rate per head as shall be determined by them, or such portion of such cost as shall not have been recovered from the parents or step-parents of such child, as hereinafter provided, or such other portion as shall be recommended by the said Secretary of State.

4. And whereas it is expedient that some provision should be made for the punishment of any juvenile offender, so directed to be detained as aforesaid in any such reformatory school, who shall abscond therefrom, or wilfully neglect or refuse to abide by and conform to the rules thereof : be it enacted, that it shall and may be lawful to and for any justice of the

peace, or in Scotland, for any sheriff or magistrate of a burgh, or police magistrate, acting in and for the county, city, borough, riding, or division wherein the said offender shall actually be at the time he shall so abscond, or neglect or refuse as aforesaid, upon the proof thereof made before him upon the oath of one credible witness, by warrant under his hand and seal, or in Scotland under his hand, to commit the party so offending for every such offence to any gaol or house of correction for the said county, city, borough, riding, or division, with or without hard labour, for any period not exceeding three calendar months.

5. The Court by which any juvenile offender is ordered to be detained as aforesaid under this Act shall charge the parent or step-parent of such offender, if of sufficient ability to bear the same, with a sum not exceeding 5s. per week towards the maintenance and support of such juvenile offender while remaining in such reformatory school, such payment to be in relief of the charges on her Majesty's Treasury in all cases where the Treasury shall have defrayed or undertaken to defray the whole or any portion of the maintenance of such offender, and in all other cases such payment to be made to the directors or managers of such reformatory school.

6. For the better compelling the parent or step-parent, as the case may be, to support and maintain wholly or partly every such juvenile offender while in such reformatory school, the provisions contained in the Act passed in the 43 Eliz., intituled "An Act for the Relief of the Poor," for compelling the parent of every poor person, being of sufficient ability, at their own charges to relieve and maintain such poor person, and also the provisions in the like behalf contained in an Act passed in the 59 Geo. 3, c. 12., intituled "An Act to amend the Laws for the Relief of the Poor," and in an Act passed in the 4 & 5 Wm. 4, intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," shall be respectively held and deemed, and the same respectively are hereby directed to be applicable, within England and Wales, to the compelling the parent or step-parent respectively of every such juvenile offender to maintain or support him, either wholly or partly, while remaining in such reformatory school, and for the recovery of the weekly payment so charged upon such parent or step-parent; and in Scotland such payment may be sued for and recovered at the instance of the procurator fiscal or of the treasurer of such reformatory school in the Sheriffs' Small Debt Court, and the provisions of an Act passed in the 8 & 9 Vict. c. 83, intituled "An Act for the Amendment and better Administration of the Laws relating to the Relief of the Poor in Scotland," for the punishment of parents deserting their children, or refusing or neglecting to maintain them, shall be held and deemed and are hereby directed to be applicable to the case of parents or step-parents refusing or neglecting to pay the amount so

charged upon such parent or step-parent as aforesaid.

7. It shall and may be lawful for her Majesty's Secretary of State for the Home Department, if he shall think fit to do so, to remove any such youthful offender from one reformatory school to another: Provided always, that such removal shall not increase the period for which such offender was sentenced to remain in a reformatory school.

8. This Act shall not apply to Ireland.

## NOTICES OF NEW BOOKS.

*The Rights of British and Neutral Commerce, as affected by recent Royal Declarations and Orders in Council.* By JOHN HUSACK, Barrister-at-Law. London: S. Sweet. Pp. 125.

THE importance and novelty of the concessions made to the interests of commerce in the present war have induced Mr. Husack to explain their legal effects. He states the rights of maritime warfare hitherto claimed and exercised by Great Britain, comprising,—1. The rule of 1756. 2. The capture of enemy's property. 3. Contraband of war. 4. Blockade. 5. The right of search. 6. 7. Privateers and impressment.

The Author next treats,—1. Of the recent Royal Declarations and Orders in Council. 2. Trade with the enemy. 3. Jurisdiction.

Lastly, the work comprises,—1. Contracts. 2. Freight. 3. Insurance.

"In practice," says Mr. Husack, "it has been found a task of much greater difficulty to define the rights of naval than those of territorial warfare. The questions arising out of the latter are comparatively few in number, and generally capable of solution, according to principles long established; but the discussions to which the rights of maritime warfare have given rise, during the last two centuries, are of endless variety, and the speculations of jurists upon the subject have been no less conflicting than the policy of rival states. During the progress of the last general war these questions became the frequent subject of dispute between different powers, and the rights claimed and exercised by Great Britain were objects of especial controversy both in Europe and America. Many and formidable were the efforts made to induce her to relinquish a portion of these rights, but she continued, nevertheless, to maintain and to exercise them until the termination of the war. It is important, therefore, to ascertain the nature and extent of these rights; and we find that in the year

1801 they were formally declared and defined in the following terms:—

"Rule of 1756.—1. That it is not lawful to neutral nations to carry on in time of war, for the advantage or on the behalf of one of the belligerent powers, those branches of its commerce from which they are excluded in time of peace.

"Capture of enemy's property.—2. That every belligerent power may capture the property of its enemies wherever it shall be met with on the high seas; and may, for that purpose, detain and bring into port neutral vessels laden wholly or in part with any such property.

"Contraband.—3. That under the description of contraband of war, which neutrals are prohibited from carrying to the belligerent powers, the law of nations (if not restrained by special treaty) includes all naval as well as all military stores; and generally all articles serving principally, according to the circumstances of the war, to afford to one belligerent power the instruments and means of annoyance to be used against the other.

"Blockade.—4. That it shall be lawful to naval powers, when engaged in war, to blockade the ports of their enemies by cruising squadrons *bond fide* allotted to that service, and fairly competent to its execution. That such blockade is valid and legitimate, although there be no design to attack or to reduce by force the port, fort, or arsenal to which it is applied. And that the fact of the blockade, coupled with due notice thereof to neutral powers, shall affect, not only vessels actually intercepted in the attempt to enter the blockaded port, but those ships also which shall elsewhere be met with, and shall be found to have been destined to such port, under the circumstances of the fact and notices of the blockade.

"Right of search.—5. That the right of visiting and examining neutral vessels is a necessary consequence of these principles; and that by the law of nations (when unrestrained by treaty) this right is not in any manner affected by the presence of a neutral ship of war, having under its convoy merchant ships, either of its own nation or of any other country.

"Such were the rules formally announced by the British government at the beginning of the present century, as applicable by the law of nations to maritime warfare. But, in addition to these, we may observe that two belligerent rights have at all times been acknowledged as prerogatives of the Crown, of which the foregoing rules make no mention. The first of these is the privilege of issuing letters of marque and commissioning privateers; the second is the right, which England has always asserted, of impressing her own subjects out of neutral merchant ships in time of war. The first of these rights is a universally acknowledged attribute of independent sovereignty;

the second is a necessary result of the English doctrine of allegiance, which does not permit the subject, by any act of his own, to dissolve the natural and inherent obligation under which he may be called upon, at any time and in any place, to render military service to the Crown."

Mr. Husack ably comments on these several rules, and then proceeds to state the penalties attaching to *Contraband* of war. The following he gives as the result of the decisions upon the subject:—

"1. If the owner of a contraband cargo is also owner of the ship, both cargo and ship are liable to condemnation. If he is owner of a share of the vessel only, his share will be condemned.

"2. The penalty attaching to the conveyance of hostile troops or despatches, is the confiscation of the ship. And if the owners of the cargo are implicated, it will share the same fate."

"3. The carriage of contraband with a false destination and false papers, subjects both ship and cargo to condemnation."

"4. The ordinary penalty attaching to contraband, is the confiscation of the articles seized. But if the owner of the contraband goods is also owner of the remainder of the cargo, the whole will be condemned. If he is owner of a portion only of the remainder, that portion will be condemned."

"5. In certain cases naval stores and provisions are subjected only to the right of pre-emption by the captor at a reasonable price."

Under the head of *Jurisdiction* the Author states the *mode of procedure* as practised in the chief maritime states of Europe, to be as follows:—

"By the maritime law of nations, universally and immemorably received, there is an established method of determination, whether the capture be or be not lawful prize.

"Before the ship or goods can be disposed of by the captor, there must be a regular judicial proceeding, wherein both parties may be heard, and condemnation thereupon as prize, in a Court of Admiralty, judging by the law of nations and treaties.

"The proper and regular Court for these condemnations is the Court of that State to whom the captor belongs.

"The evidence to acquit or condemn, with or without costs or damages, must in the first instance come merely from the ship taken, viz., the papers on board; and, the examination on the oath of the master and other principal officers; for which purpose there are officers of Admiralty in all the considerable seaports of every maritime power at war; to examine the captains and other principal officers of every

\* *The Albatross*, 6 Rob. Adm. Rep. 400.

\* *The Franklin*, 3 Rob. Adm. Rep. 294.

\* *The Steam Barge*, 1 Rob. Rep. 26.

\* See Parliamentary History, vol. 36, p. 221.

ship brought in as a prize upon general and impartial interrogatories. If there do not appear from thence ground to condemn as enemy's property, or as contraband goods going to the enemy, there must be an acquittal, unless from the aforesaid evidence the property shall appear so doubtful, that it is reasonable to go into further proof thereof.

"A claim of ship or goods must be supported by the oath of somebody, at least as to belief. The law of nations requires good faith. Therefore every ship must be provided with complete and genuine papers; and the master at least should be privy to the transaction.

"*Evidence.*—To enforce these rules, if there be false or colourable papers, if any papers be thrown overboard, if the master and officers examined *in preparatorio*, grossly prevaricate, if proper ships' papers are not on board, or if the master and crew cannot say whether the ship or cargo be the property of a friend or enemy, the law of nations allows, according to the different degrees of misbehaviour or suspicion, arising from the fault of the ship taken, and other circumstances of the case, costs to be paid, or not to be received by the claimant in case of acquittal and restitution. On the other hand, if a seizure is made without probable cause, the captor is adjudged to pay costs and damages. For which purpose all privateers are obliged to give security for their good behaviour; and this is referred to, and expressly stipulated by many treaties.

"Though from the ships' papers and the preparatory examinations, the property does not sufficiently appear to be neutral, the claimant is often indulged with time to send over affidavits to supply that defect. If he will not show the property by sufficient affidavits to be neutral, it is presumed to belong to the enemy. Where the property so appears from evidence not on board the ship, the captor is justified in bringing her in, and excused paying costs, because he is not in fault; or, according to the circumstances of the case, may be justly entitled to receive his costs.

"*Sentence and Appeal.*—If the sentence of the Court of Admiralty is thought to be erroneous, there is in every maritime country a superior Court of Review, consisting of the most considerable persons, to which the parties who think themselves aggrieved may appeal; and this superior court judges by the same rules which govern the Court of Admiralty, *viz.*, by the law of nations and the treaties subsisting with that neutral power whose subject is a party before them.

"If no appeal is offered, it is an acknowledgment of the justice of the sentence by the parties themselves, and conclusive.

"This manner of trial and adjudication is supported, alluded to, and enforced by many treaties.

"In this method all captures at sea were tried during the last war by Great Britain, France, and Spain, and submitted by the neutral powers. In this method, by Courts of Admiralty, acting according to the law of

nations, and particular treaties, all captures at sea have immemorially been judged of in every country in Europe."

As to the question of jurisdiction in the present war, a convention was signed between the governments of Great Britain and France on the 10th of May last, which provides for the case of joint captures being effected by vessels of war belonging to the allied powers. Provision is also made for cases of *constructive* capture, as where the presence of a friendly vessel may be supposed to facilitate the capture, although it takes no direct part in it. The regulations to be observed upon these points by the two powers are laid down in the following articles:—

"1. When a prize shall be made in common by the naval forces of the two countries, the adjudication of it shall belong to the jurisdiction of the country whose flag shall have been borne by the officer having the superior command in the action.

"2. When a prize shall be made by a cruiser of one of the two allied nations in presence and in sight of a cruiser of the other, which shall have thus contributed to intimidate the enemy and encourage the captor, the adjudication of it shall belong to the jurisdiction of the actual captor.

"3. In case of the capture of a merchant vessel belonging to one of the two countries, the adjudication of it shall always belong to the jurisdiction of the country to which the captured vessel belongs; the cargo, in so far as the adjudication is concerned, shall share the lot of the vessel itself."

## INNS OF COURT AND CHANCERY INQUIRY.

### DEBATE ON THE MOTION FOR THE COMMISSION.

THE Speeches made in the Debate of the 1st March last, contain such important information on the grounds and objects of the Inquiry into the State of the Inns of Court and Chancery, that we deem it essential to give the report very fully.

Mr. Napier moved for an address for a commission to inquire into the arrangements in the Inns of Court for promoting the study of law and jurisprudence, the revenues properly applicable, and the means most likely to secure a systematic and sound education for students of law, and provide satisfactory tests of fitness for admission to the Bar. The character of the learned Professors was, in his opinion, a matter of great national importance and interest, and a general feeling was spreading abroad of the necessity existing for the character of professional education keeping pace with the



progress of other branches of learning. Connected with the Courts at Westminster there were 700 barristers, and in the provinces and colonies there was also a large number, making altogether more than 3,000, and nearly 4,000. No doubt, the character of the education of these gentlemen was a matter of great social importance, and he felt that it was requisite that the public should be assured that in a gentleman practising as a barrister they had a person who had received such a liberal and enlightened education as fully qualified him for the discharge of his duties. He would now refer to the evidence taken by the Commissioners appointed to examine into the state of the University of Oxford. Before that commission Mr. S. C. Denison gave evidence of the present inefficient state of legal education, and Mr. Denison's opinion had been concurred in by Lord Denman, Baron Parke, and other eminent persons. At a public meeting of the Law Amendment Society on the 18th of June, 1851, at which Lord Brougham occupied the chair, the following motion was moved by the present Solicitor-General:—

"That it is highly desirable that a school of law and jurisprudence should be founded in connexion with the Society for Promoting the Amendment of the Law."

The learned Solicitor-General, in moving that resolution, exposed the various evils attending the present want of legal education, and intimated an opinion that means might be provided of supplying the deficiency. He stated that—

"The law students at present are rarely instructed in that liberal knowledge of jurisprudence and comprehensive system, which forms the basis of all law."

He could say of his hon. and learned friend (Sir R. Bethell), that he had ever found him a consistent and enlightened law reformer, and anxious for the improvement of the Profession to which he belonged. Certainly, no one was more competent to speak with regard to its condition, and in the Solicitor-General's opinion, in 1851, it was necessary to found a separate school of law and jurisprudence in connexion with the Society for Promoting the Amendment of the Law. The same view of legal education was taken by another authority—Lord Campbell, who, in his *Life of Lord Mansfield*, speaking of the false maxim (*laissez rien faire*) on which legal education rests, said—

"I conceive that, in regard to the great mass of students entering a learned Profession, it is necessary by institution and discipline, to guide inexperience, to stimulate indolence, to correct the propensity to dissipation, and to have some assurance that those interested with defending life and property are decently well qualified for the duties which they may be called upon to discharge."

Again, in his *Life of Lord Somers*, Lord Campbell spoke of the great and anomalous defect in England, the want of regular training, and proper "examinations, to show that the aspirant is fit to be intrusted with the duties of

an advocate, and qualified to fill the offices to which, as an advocate, he may be appointed." At present there existed no test, and no condition which secured knowledge in a person called to the Bar. He admitted that a good deal had been done recently to afford improved opportunities for acquiring a legal education, but there was no increased obligation. The public, however, had a very strong interest in the lawyer being scientifically educated, and great injury had arisen to the community from the contracted minds of gentlemen of the Legal Profession when they rose to be legislators or Judges. One great evil with regard to the Profession was the want of schools for supplying legal education; and the establishment of such schools was proposed as a remedy by a very high authority—Mr. A. Amos, whose evidence would be found in the report of Mr. Wyse's Committee on Legal Education, appointed in 1846. He saw around him, on both sides of the house, gentlemen belonging to the Bar, occupying high and honourable positions, who were as learned and as efficient as any men in the country, and yet he knew that there was a general feeling among the community to depreciate the lawyer, the only advantage the lawyer ever had being personal and accidental—not in consequence of his Profession, but in spite of it. And why was that so? It was because the security of a proper and thorough legal education did not exist. But, before adopting any plan which should be entirely new, he would suggest the propriety of endeavouring to reform and rectify existing institutions. If, however, the existing institutions should be found incapable of being made to answer the exigencies of the times, then, in his opinion, they ought to be swept entirely away. But if they admitted of reform, by all means let an effort be made in the first instance to effect a reformation. There could be no better reform than making an institution answer the purpose for which it was wanted, and the requirements of the times. At present we had two great public institutions for the education of members of the Bar—namely, the Universities and the Inns of Court. With regard to the universities, commissions to inquire into their condition had already been issued, and had been the means of collecting together much valuable information, in consequence of which many improvements might be expected.

The Inns of Court ought now to undergo the same process of purification. He did not make this proposition in any hostile spirit, but as a matter of duty, and his sole desire was to see our actual resources for the advancement of legal education honourably and usefully applied to their proper purposes. Many hon. members around him had expressed their hearty concurrence in an inquiry of this description. Certainly no doubt or difficulty should exist as to the extent of the resources of the country for the purposes of legal education, and there could be no disinclination to have those resources legitimately and profitably employed. He would mention what he found

the state of education at the time he was called to the Bar. He remembered well having to ask experienced friends what course of reading they recommended a student to follow, for when he came to London for the purpose of eating a certain number of dinners, the mere dining was all that was required, and the only opportunity afforded of learning anything was over a bottle of wine. Having an experienced friend however, who had once practised at the Irish Bar, he asked him, in his simplicity, what course of study he would recommend him to take up. The answer was, "If you are going to the Irish Bar the best thing you can study is *"Joe Miller."* His friend also told him that, in his early days, he had read the best books, but he got no business, and he soon found that those who cracked the best jokes made the most money. He (Mr. Napier) could not say he had taken the advice given to him, but it so happened that about that time the London University was opened, and Mr. Amos delivered a course of lectures, which he attended in order to see whether he could learn anything from them. All the instruction he had ever received while in London was from those lectures and from some discourses of Sir John Pattenon. In the year 1839 the hon. and learned member for Louth (Mr. Kennedy) founded the Dublin Law Institute, and in founding that institute the hon. member was assisted by the hon. and learned member for Keshikillen (Mr. Whiteside), and other members of the Irish Bar. Upon the foundation of that institution Mr. Justice Story wrote a letter to the hon. member for Louth, which was given at page 350 of the report of the Committee on Legal Education, appointed in 1846. The learned Judge stated in the letter that he had read with great interest certain papers which had been sent him respecting the establishment of the Dublin Law Institute; that he had long been persuaded a more satisfactory system of legal education than that pursued was demanded by the progress of the country and the wants of the age; and that the old system of unassisted studies at the Inns of Court was utterly useless. Mr. Justice Story also added that he was aware any change which might be contemplated was likely to meet with much opposition from those who had been accustomed to the old system, but if Parliament would consent to aid in any effort to reform the existing system, he should indulge in higher hopes of success. Professor Greenleaf also expressed an opinion that the system of legal education existing should be put upon a better foundation; and, surely, the opinions of such eminent men were entitled to great consideration. Upon Mr. Wyse's Committee, which sat in 1846, there were several eminent members of the bar—among others, the right hon. and learned member for Midhurst (Mr. Walpole), and his (Mr. Napier's) hon. colleague (Mr. G. Hamilton). That committee, after examining a number of eminent men, reported in strong terms against the system then in force, and the utter futility of vo-

luntary lectures. The great object was to secure for members of the Bar a sound and good general education, and not merely to afford the means of rising to eminence to men who would attain a high position under any system whatever. The evidence given before the committee in 1846 was considered to be quite conclusive as to the futility of mere voluntary lectures, and the Committee stated in their report that they could not believe that such lectures would have the efficiency which was requisite. The course the Committee suggested was, that the examinations should be obligatory, but that those for honours might be voluntary, and they left the extent and condition of such examinations to be determined by the highest authorities. To most people the conclusion thus arrived at by the Committee would appear to be as clear as any that could be come to. The practice of all other countries was to require a student to undergo an examination before he was admitted to the Bar, and he considered that in that particular this country was behind every other. The Committee, therefore, pointed out most strongly the absolute necessity of having real *bona fide* tests.

The Benchers were in this position,—there were a number of Inns of Court, and if the Benchers of one Inn determined to impose a test before admitting men to the Bar the students would go to another Inn to avoid the examination. It might be said that competition between the Inns of Court would effect the object desired; but the competition between them was not which Inn should impose the best tests, but which should impose the least. Not long since the Inner Temple provided an examination, and instead of availing themselves of it, the students went to the other Inns to enter themselves. Unless harmony of action could be secured between the Inns of Court, the action of any particular Inn was useless. It was even doubted by Lord Brougham whether the Inns had the power of imposing an examination without the help and authority of the Legislature. Lord Brougham intimated that if the Benchers insisted on compulsory examination to admit to the Bar, they might be attacked in a Court of Law as exceeding their powers. Lord Campbell differed from the noble and learned lord in this opinion, but some legislative interference was absolutely necessary. The voluntary course had been tried. Persons might be attracted for a time to attend the lectures and examinations, but they fell away, and no efficient legal education could be secured by this means. The Inns of Court were clearly a species of university for the purpose of training young men to the study of the law. The compulsory attendance of the Irish students originated in this view for the very ground upon which Irish students were compelled by the 23rd of Henry the 8th, to keep terms in one of the English Inns of Court was because they might thus acquire a knowledge of English law. Giving the Benchers full credit for a desire to promote legal education,

it could hardly be denied that the conditions of the Inns of Court and the provisions for legal education were far short of the requirements of the age. The Inns of Court had ample revenues and large accommodation, and they received fees and dues from the students, in return for which it was important they should make public provisions for their education. There was a peculiar class of men who, without private means had to fight their own way to the Bar. They were the best class of men, because they got on by force of their industry and talent, and it was desirable that this class, who had no independent means, should be encouraged. There was another class, who were intelligent but not industrious, and they required guidance and assistance. The general character of the Bar would be secured by the systematic character of the education they received, and an enlightened spirit would prevail, such as would stamp our jurisprudence with a character commensurate with the wants of the times. He was prepared to establish that the Inns of Court were bound by a public trust for the Profession and the Public, that this trust they had not fulfilled, especially as to the Irish students, and that the interference of Parliament, through the instrumentality of a commission, was greatly needed. He might adduce a great deal of evidence that the Inns of Court were a public foundation and trust. Fortescue described them as follows:—

"1. Inns of Chancery, in which younger students began, learning and studying the elements and principles of the law, who profiting therein as they grew to ripeness, were then admitted to the greater inns of the same study, called Inns of Courts. Barons and knights and other grantees, and noblemen of the kingdom, were accustomed to place their children there, though they did not desire to have them thoroughly learned in the law, or to get their living by its practice."

The Inns of Court were called by Fortescue the "lawyers' university;" there was advancement in them for the student in a regular system of collegiate graduation, and proficiency was tested and rewarded. They were, as Fortescue described, designed for the reception, lodging, and education of professors and students of the law. The statute of Henry 8, requiring the Irish students to come to London, set forth the reasons:—

"No person can do or minister any thing or things in any of the Four Courts of Dublin which hath been used to be done by one learned or taken to be learned in the king's laws, but such person or persons as hath or shall be for the same at one time or several times by the space of years complete at the least, demonstrant and resident in one of the Inns of Court within the realm of England, studying, practising, or endeavouring themselves the best they can to come to the true knowledge and judgment of the said laws."—33d of Henry VIII., Session 2, chap. 3, section 3 (Irish Act). In 1574, in the reign of Queen Elizabeth, it would appear there was a falling off, and a re-

markable order in Council was issued for the government and reform of the Inns of Court. The order in Council, by giving minute directions as to the chambers and the admissions of students, showed that even in those days the Inns of Court required a little dusting. This order was signed by Bacon, Burghley, Sussex, Leicester, Walsingham, and the most eminent statesmen of the day. Even so early as Elizabeth's time, it appeared that the Inns of Court had been falling away from the objects for which they were instituted, and that they required public surveillance. In the 33rd year of Elizabeth there was an order of the judges, reciting the falling off of the readings and mootings, and reprehending the feasting, &c., which had occasioned this falling off. In the beginning of the reign of James I. (in the year 1609) a grant was made in perpetuity to the Inner and Middle Temple, from the Crown, and this trust was for the lodging, reception, and education of the professors and students of the laws of this realm. Lord Coke in the preface to his third book of Reports, described the four Inns as four famous colleges, each with at least 20 readers, thrice so many utter barristers, and eight or nine score young gentlemen studying law; and Lord Coke called it "a famous university." There was an order in Council in the time of James II., which recited:—

"For that the institution of these societies was ordained chiefly for the Profession of the Law, and, in a second degree for the education of the sons and youth of riper years of the nobility and gentry of this realm."

In the report of Mr. Wyse's Committee, in 1846, it was stated as to the Inns of Court, that they were "originally founded and endowed for these very objects, and thus requiring no innovation, but such modifications only as existing society may demand to fit them for places of special legal education." The 16th resolution of Mr. Wyse's Committee set forth that no innovation was required in the Inns of Court; all that was necessary was to revert to the original objects of this institution. It was clear that the design of the Inns of Court was that, by a course of regular and gradual training, they should secure the proper education of men who were going to the Bar, and that they should test their efficiency by a system of examinations. Lord Bacon saw the defects that existed in his time, and lamented the want of systematic education at our universities for law and public life. He advised that a claim for the teaching of law should be founded in each of our universities, and liberally endowed. It was most desirable that men should lay a broad and deep foundation of general knowledge before they came to the special knowledge required by their Profession. The exigency was not supplied either at the Universities or at the Inns of Court. The great defect of the present system was, that when a young man came from college his first thought was to gain that knowledge which could be the most turned to account. Know-

ledge of a 'deep and philosophical' kind 'it was a waste of time for him to acquire, and he proceeded to the office of a special pleader and conveyancer, in order to enter at once upon the technical details of the Profession. Thus his education began with the acquirement of knowledge of a narrow and technical character, and this it was which had caused the Profession to be depreciated in the public estimation. The public saw vicissitude, delay, expense, and technical procedure in the conduct of suits, and they supposed that there was nothing liberal or enlightened in the Profession of the Law. The universities did nothing to carry out the suggestion of Lord Bacon, and it was not until the Vinerian Professorship was established at Oxford that a beginning was made. The lectures of Justice Blackstone, thus delivered, had by their clearness, high cultivation, and classical tastes, secured the gratitude of posterity; and the Vinerian Professorship led to the foundation, in 1761, of a Professorship of English Law in Trinity College, Dublin. The reasons stated for founding it were—

"The great advantages to the university and kingdom which had been found to arise from the Oxford Professorship, and because, among the more polished nations, the study of municipal laws ought always to be held in the highest honour, as being not only the great ornament of the nobles and princes of the State, but also especially necessary to its safety."

At present, the only qualification for being called to the Bar was, that a man should eat and drink and be able to write his name; and yet barristers of six and 10 years' standing were declared by that House qualified to fill various public situations. The noble lord (J. Russell) in his new Reform Bill proposed to treat the Inns of Court as a University, and the barristers as its graduates. There never was a time, therefore, when it was more desirable to give reality to those names and forms, and to found those privileges upon real education. The University of Dublin had done a great deal, and had concurred with the Benchers of the King's Inns in the necessity of making some provisions for the education of students. The Legal Education Committee appointed by the Council of the King's Inns, said in their report:—

"We learn that France, Italy, Russia, all the kingdoms and States of Germany, and the United States of North America provide public means of legal education by lectures and examinations, and require all candidates for the profession of an advocate to avail themselves of those advantages. The same system has, of late years, been adopted by Scotland."

He thought the gentlemen of the Scotch Bar were more generally and more liberally educated than the members of either the English or Irish Bars. They did not set about acquiring technical knowledge until they had studied the civil law and had a good foundation of general knowledge, and they were still endeavouring to extend the education of their law stu-

dents. The Legal Education Committee showed that the want of a course of legal instruction by lectures and examinations had operated very injuriously upon English jurisprudence. "This deficiency," they continued—

"May be traced in text-books, in the arguments of the Bar, and even in the judgments of the Bench, producing an undue and increasing preference of memory to reason—of technicality to science—and of the mere citation of cases to the development of legal principles. They consider this growing tendency to be disparaging to the law and its professors and prejudicial to the administration of justice, and that its remedy lies in the inculcation of a sound elementary system, whereby the mind, commencing with the first principles of the science, shall be furnished with means at once to test and to classify all subsequent acquisitions of knowledge, instead of being left, as the student, in a great measure, has hitherto been, to collect principles for himself, as best he can, among the infinite detail and ever increasing mass of thousands of cases."

The Dublin Benchers proposed to follow the example of the Inns of Court, but they were hindered by the arrangements in England. He had received, however, communications from the late and the present Professor of Law in Dublin, in which they expressed a confident opinion that a voluntary examination was not sufficient. There would always be a few more earnest and more industrious than others; but for the great body, unless there was established a system of periodical examinations, and a final examination to test their proficiency, nothing would be done commensurate with the wants of the times. But it would be said that many gentlemen were now called to the Bar who did not intend to practise, and that these gentlemen would not like to go through the compulsory examination. But he saw from the Oxford University Report that there was every probability of a great improvement in University education, and, although the attendance upon the lectures of University professors of law would not complete the education of a young lawyer, yet it might do a great deal towards laying a deep and broad foundation. What was wanted was that University students, whether they intended to follow the Profession of the Law or not, should receive at the Universities such a knowledge of the principles of mental and moral philosophy, civil law, and general jurisprudence, as was necessary to complete the character of English gentlemen, and enable them to take a part in public life with credit to themselves and advantage to the community.

A commission could confer with all parties and advise a general plan. It would, of course, be necessary that the commission should be composed of men whose names would command public confidence. If such a commission would place themselves in communication with the Universities and the Inns of Court, they might carry out a harmonious plan between

the Universities on the one hand and the Inns of Court on the other, from which the greatest advantages might be derived. In Ireland the greatest harmony existed between the University which he had the honour to represent, and the King's Inns, but they were hampered by the regulations requiring the Irish students to come to England, where they had nothing to do but to eat a certain number of dinners. Great changes had been made, and he believed we were on the eve of still more important changes in our system of law. There never was a time when more enlightened views of jurisprudence were required. Every year, too, we maintained a larger intercourse with foreign nations, and a knowledge of international law was therefore becoming an important portion of a lawyer's education. It was important that the greatest facility should be afforded and ample provision made whereby intelligence and industry might acquire social reward. The struggles of students under the existing system, and especially of Irish students, were very great. He would take the case of the late Lord Plunket, than whom a man of higher abilities or more vigorous intellect had seldom come from Ireland to this country. His early life had been a struggle with difficulties. He had been obliged, at great inconvenience, to keep his terms in England before he was called to the Irish Bar; and yet when Mr. Canning offered him an English peerage and the Mastership of the Rolls, the English lawyers interposed, and prevented him from receiving those dignities. What must be his feelings, or the feelings of any man, under the infliction of such an injustice? What an advantage would it not have been to such men as Lord Eldon and Lord Plunket in their early career, if due provision had been made in their day for the training and education of young law students? If the House desired to put the Legal Profession upon the right basis, to give it weight and influence, they must establish a sound and harmonious system of education. Next to theology, that was surely the noblest of the sciences which taught men the laws, which regulated their relation to civil government, and their civil rights and duties. The right hon. gentleman concluded by moving, that a humble address be presented to her Majesty, praying her Majesty to be graciously pleased to issue a commission to inquire into the arrangements in the Inns of Court for promoting the study of law and jurisprudence, the revenues properly applicable and the means most likely to secure a systematic and sound education for students of law, and provide a satisfactory test of fitness for admission to the Bar.

Mr. F. French seconded the motion.

[We shall, in an early Number, give the speeches of the Attorney and Solicitor-General and other members.]

## MANOR OF KENNINGTON.

### EXORBITANT FINE DEMANDED.— DEMESNES.

MUCH having been of late years written and said on the question, whether it was incumbent on public bodies to renew their leases in perpetuity, from the constant practice of renewal, the subjoined statement may not be uninteresting, notwithstanding an Act of the Legislature has passed in favour of the lessees:—

The demesnes of the manor part of the possessions of the Duchy of Cornwall have been held by the Clayton family since the 22 Charles 2nd, when a grant was made to J. Morris and Robert Clayton, by the King as Duke of Cornwall, for 31 years, at a rent of 50*l.*, and on payment of a fine of 288*l.*

In 1686, another grant was made to Robert Clayton, Esq. (afterwards Sir Robert), for 15 years, in reversion from Michaelmas, 1701—rent 16*l.* 10*s.* 9*d.*—fine 532*l.*

In 1699, another grant made to him for 13½ years in reversion from Michaelmas, 1716—same rent—fine 350*l.*

In 1732, another grant was made to Sir William Clayton for 31 years in possession—same rent—fine 354*l.*

18th July, 1747.—William Clayton surrendered the term to the Duchy, who made him another grant for 31 years at same rent—fine 354*l.*

21st September, 1765.—Another grant was made to him in reversion for 18 years from 5th April, 1778, at the same rent—fine 690*l.*

In 1776, an Act was passed by which Sir William and his successors were enabled to grant building leases for a term of 99 years, from the 5th April, 1778, determinable on the dropping of three lives, which leases were to contain covenants on the part of the lessor from time to time to apply for, and "if the same could be obtained on reasonable terms," procure a renewal of the letters patent, so as to enable Sir William to make up the full term, which should be granted in the building leases.

5th March, 1777.—King George 3rd (the then Duke of Cornwall) by letters patent granted the premises to Mr. Freeman as trustee for the Clayton's for 99 years, if Sir William, George Clayton, his brother, and James Edwin, should so long live, at the rent of 16*l.* 10*s.* 9*d.*, fine 468*l.*, being about a year and a half rent received by Sir William.

Sir William under the Act granted various leases, the aggregate rents amounting to about 1,230*l.*

Among these leases one was granted to Ismay and Harrison for 65 years, if Sir William, George Clayton, and J. Medwin should so long live, at the annual rent of 350*l.*, and which contained the covenant before alluded to "to apply for, and use their utmost endeavours" to effect a renewal with the Duchy.

On 11th October, 1828, George Clayton died. The late Sir William Clayton, in a few

days afterwards, memorialised the King for the insertion of the name of William Peto as a new life. In consequence of the illness and death of the late King a considerable time elapsed, but in September, 1831, he was surprised to hear that the Duchy required what Mr. Thesiger, in the action after-mentioned, characterised as "*the enormous, the most voracious fine of 64,210*l.*, with interest amounting to 72,000*l.**" Sir William in vain remonstrated on the unreasonableness of the demand, declaring that his interest for some 24 years could not exceed 1,230*l.* a year.

Numerous public meetings were held and petitions presented by the sub-lessees to the Crown, the Duchy, and to the Lords of the Treasury.

In 1832, these being ineffectual, Sir William presented his petition of right to the King in Council, and a Bill was filed in Chancery, which was dismissed by Lord Brougham in June, 1834, who declared no case had been made out by Sir William against the defendants.

On 11th August, 1835, an action was tried at the Surrey Assizes before Mr. Justice Park, wherein Mr. Simpson, a lessee, was plaintiff, and Sir William Clayton, Bart., defendant, damages being laid at 10,000*l.*, the gist of which was, that Sir William had not used his best endeavours to obtain a renewal.

It was in the course of the proceedings on that trial that Sir Frederick (then Mr.) Thesiger characterised the fine as *an enormous and a most voracious one*, contending with much reason that it was most unjust and unreasonable that Sir William should renew upon a fine calculated upon the "*rack rent*" of property of which he would not come into possession for upwards of 20 years, and that a fine calculated on the ground-rents which Sir William actually received was all the Duchy ought to have demanded.

The learned Judge then charged the jury—1st, whether Sir William did use his utmost endeavours to procure a renewal; and 2nd, whether the fine demanded by the Duchy was *reasonable* fine for him to pay, and intimated that in point of law Sir William was not bound to pay an *unreasonable one*."

The result was, that an intelligent special jury, comprising the magistracy and the most eminent landowners in Surrey, found a verdict in Sir William's favour, thus establishing the fact, that the fine demanded by the Duchy was *unreasonable*.

But although he succeeded in his defence to this action, he nevertheless lost his fine estate, and many of the sub-lessees were ruined. One gentleman in particular, a professional man at Kennington Cross, loses some *seventy houses* through the confiscation resulting from this exorbitant demand of the Duchy.

Considerable amusement was afforded to the Court and the gentlemen of the Bar and the jury, by Mr. Thesiger reading from Lord Brougham's judgment on this occasion the following paragraph:—"Were I to give judgment now against the Crown, I should make every

tile throughout the kingdom shake, and conjure up a fearful group, a host of dark and fantastic suitors to blacken the Hall, and fill its air with novel and discordant sounds, uncouth to all learned ears, unintelligible to all learned minds,—and involve the community and all real property in a maize of groundless, endless, and pitiless litigation." And yet Lord Brougham lived to be an assenting party to the Act for the relief of the Owners of Renewable Caputular Leasehold Estates in 1854.

It is believed the Duchy afterwards granted separate leases to the persons in actual possession of the numerous houses, on similar proportionate terms to those demanded of Sir William Clayton,—thus realising an immense sum.  
R.

## ADVICE TO YOUNG LAWYERS.

### ATTENTION AND RESOLUTION.

EULER, the author of the Elements of Algebra, was famed for his wonderful attention, which is the greatest constituent of intellectual power. His elements are recommended as affording an admirable exercise of the reasoning faculty, and as the best means of cultivating a talent for analysis, close investigation, and logical inference. Attention is that retirement of the mind within itself during which the senses are locked up,—that intense meditation during which no extraneous idea can obtrude,—and that firm, straightforward progress of thought which deviates into no irregular sally,—places objects in a light sufficiently strong to illuminate them fully, and preserves the perceptions of the mind's eye. Every man, therefore, ought to cultivate attention.

Our steadfast resolution should ever be to perform that which is our duty. Having resolved, we should perform our resolution without delay; for to resolve and not to perform is worse than useless.

### GOOD ADDRESS.

In passing through life one of the qualifications we should anxiously seek to acquire is that of a "*good address*," either in receiving or speaking to a stranger or friend. If we meet with an individual without a good address, we are too often prejudiced against him and all that he has to advance; whereas if we meet with one who has a good address, we are instantly struck and interested in his favour.

Next to a good address, it is important to show that we possess, "*good manners*,"—that is to say, manners of a mild, conciliatory, and gentlemanly description; for unless these be manifested and put forward, the impression made by a good address will be lost and destroyed. Our object in cultivating a good address and good manners is to fit us to pass current with the world, and so to qualify us for general society; but although we may possess these qualifications, yet if not accom-

punished by a sincere and active desire to please those with whom we are associated either in pleasure or business, we shall be styled selfish, proud, and indifferent. It is too much the case with mankind to seek their own pleasures exclusively, whereas the object of man, who is a social being, should be to impart to others that knowledge and information, and to pursue those steps calculated to afford pleasure to others in preference to himself. Let us all, then, study to acquire a good address, good manners, and to please others in preference to ourselves. S.

[Perhaps some apology is due to the present race of young lawyers for offering these suggestions. They were written by a correspondent some years ago when "sharp practice" very extensively prevailed,—when roughness of manners was admired as zeal and energy,—and not unfrequently rude language was followed by personal violence. For the most part, professional business is now conducted with courtesy, amidst conflicting discussion; and firmness in the discharge of duty is tempered with suavity of manner.—Ed. L. O.]

## LAW OF COSTS.

### ON INJUNCTION TO RESTRAIN RECOVERY OF LEGACY IN COUNTY COURT.

An injunction was issued against a legatee, to restrain his proceeding in a County Court, to recover a legacy, after a decree or order on summons for the administration of an estate; *held*, that he was entitled to his costs of the proceeding in the County Court, down to the time of his being served with notice of the administration order. *Ratchiffe v. Winch*, 16 Beav. 577.

### SECURITY FOR, ON COLOURABLE RESIDENCE WITHIN JURISDICTION.

A plaintiff carrying on business as a merchant at Inverness, in Scotland, took furnished lodgings in London, and resided there, but he had not done so for any length of time, nor had he engaged them for any definite term.

On a motion that he might give security for costs, the *Master of the Rolls* said:—"The question does not depend on any technical rule, but I must see if the defendant has a fair and reasonable chance of finding the plaintiff, to answer the process of the Court, in case he should be wanted, and I am of opinion that he has not. I by no means say, that if a foreigner were to come here and to take up his abode, and hire a house for a certain

period, he would be required to give security for costs. But here it is obvious from the affidavits, that the plaintiff, whose permanent residence, business, and domicile are in Scotland, might have come and taken lodgings within the jurisdiction for the express purpose of avoiding the necessity of giving security for costs. I think he is bound to show the contrary; for if it were otherwise, any person living on the continent might sue any person in this country, without incurring any liability. He would have nothing to do but to cross the channel, and describe himself as residing at an inn at Dover; he might leave when he pleased, and if his motions were watched, come back again." *Ainslie v. Sims*, 17 Beav. 57.

### OF CONTEMPT FOR INSUFFICIENT ANSWER.

"If a defendant being in contempt files his answer, and then refuses or neglects to pay the costs of the contempt, the plaintiff is entitled to an order to take his answer off the file, with costs, upon a motion for that purpose."—Per the *Master of the Rolls*, citing *Sidgier v. Tyte*, 11 Ves. 202.

*Coyte v. Alleyne*, 16 Beav. 546.

### ON INFORMATION IN RESPECT OF PARISH LAND.

An information in respect of parish land was filed against the churchwardens nominatim, and not in the mode pointed out by the 59 Geo. 3, c. 12, s. 17, but before the hearing they were changed. The *Master of the Rolls*, in making a decree, directed that the churchwardens and overseers should be served with notice of the proceedings in Chambers, but that the costs of one attendance only could be allowed to the defendants, the present churchwardens to arrange as to who should attend. *Attorney-General v. Salkeld*, 16 Beav. 554.

### OF MORTGAGES AFTER DECREE IN FORECLOSURE SUIT.

The ordinary decree had been made in a foreclosure suit by mortgagees, to take an account of principal, interest, and costs, and the Master had accordingly found the amount due, and his report had been confirmed. The plaintiff then incurred costs in another suit instituted by prior incumbrancers, in respect of other property mortgaged to the plaintiff, but which was found upon a sale insufficient to pay such prior incumbrances: *Held*, that they

could, by petition, obtain an order to add such costs to their security. *Barron v. Lanesfield*, 17 Beav. 308.

## LAW OF VENDOR AND PURCHASER.

### PAYMENT OF INTEREST WHERE VENDOR IN DEFAULT.

On the sale of an advowson, the purchase-money was to be paid on a fixed day, and the conveyance to be executed; but, in default of payment, the purchaser was to pay interest. The purchase was not completed, through the default of the vendor: *Held*, that no interest was payable. *Weddall v. Nixon*, 17 Beav. 160.

### SALE UNDER DECREE OF LEASE WITH RESTRICTION.

Leaseholds were sold under a decree, and which were described as "a bonded sugar refinery," but on reference to the lease it contained no such restriction. The abstract showed a prior agreement for a lease of the premises to be used "for refining sugar in bond." The purchaser having accepted the title and paid the purchase-money into Court, was let into possession. The lessors afterwards instituted a suit to rectify the lease by introducing the restriction. The *Master of the Rolls* refused to compel the final completion of the purchase, or to part with the purchase-money, until the result of the suit was known. *Bentley v. Craven*, 17 Beav. 204.

## POINTS IN EQUITY PRACTICE.

### TIME FOR EXCEPTING TO ANSWER OF DEFENDANT IN CONTEMPT.

THE time for excepting to the answer of a defendant in contempt, runs from the period of filing the answer, and not from the time when the costs of the contempt are paid, if for any reason the plaintiff fails to have the answer taken off the file, or if he accepts the costs. The practice is not that the answer ought not to be filed until the costs paid. *Coyle v. Alleyne*, 16 Beav. 518.

### INSPECTION OF DOCUMENTS.

*Held*, that an order for liberty to the "plaintiff, his solicitor, or agents," to inspect documents in the defendant's possession, does not authorise the inspection by a non-professional relative of the plaintiff, although alleged to be the only person conversant with the account. A special order permitting the inspection by

such party, was also refused. *Summerfield v. Pritchard*, 17 Beav. 9.

### RECOVERY OF LEGACY IN COUNTY COURT AFTER ADMINISTRATION ORDER.

AFTER a decree or order on summons under the 15 & 16 Vict. c. 86, for the administration of an estate, *held* that a legatee will be restrained from proceeding in the County Court under the 9 & 10 Vict. c. 95, s. 65, and 13 & 14 Vict. c. 61, s. 1, to recover the legacy, and notwithstanding he submits to take a judgment against the executor *de bonis propriis*, alleging a *deceit*. *Ratcliffe v. Winch*, 16 Beav. 576.

## SELECTIONS FROM CORRESPONDENCE.<sup>1</sup>

To the Editor of the Legal Observer.

### ARTICLED CLERKS ATTENDING MAGISTRATES AND COUNTY COURTS.

SIR,—In the conduct of the business of a country attorney of the first respectability, it often becomes desirable that for his regular clients he should attend the Magistrates or the County Court, but by the present regulations of most of these tribunals he can only do so personally. With your permission, I desire to suggest, that with great advantage both to the administration of justice and to the Profession, *articled clerks of attorneys* might be permitted to plead in these Courts. It is apparent that the better class of attorneys are, for the most part, precluded by the pressure of more important business from attending to this kind of duty, and it thereby falls into the hands of a particular class of practitioners who are ever found upon the threshold of the Courts, I have mentioned.

If *articled clerks* were permitted to plead there, the business in them would be received by the multitude of attorneys and the moral rules of practice at present prevailing greatly raised in character and dignity. The duty to clients would always provide that unqualified clerks would not be permitted by their Masters to perform so important a duty; and as a guard against any possible abuse of the privilege, it should be provided that the clerk should produce an authority from his master to act in each particular case. Moreover, in addition to the advantages enumerated, it would be the means of improving the clerk's capacities for business.

A short clause in one of the proposed Acts for the Improvement of the Law might be obtained, if the subject were recommended and urged by the Incorporated Law Society.

M.

<sup>1</sup> Some of these letters were printed on the cover of the last Number, and are now transferred to the body of the work.



## ARRESTING DEBTORS GOING ABROAD.

Some time ago, a writ was directed to be issued against a Frenchman, on the usual affidavits, who, it was alleged, was about to leave the country. The caption was carried into effect, and an application was in consequence made to quash the writ, the defendant deposing that no such intention existed. A noble lord deposed to an affidavit as to his belief that the allegation was untrue, inasmuch as the defendant *had in fact accepted an invitation* to dine with his lordship at his seat. Affidavits of a similar import were made by others, and the Judge (one of the present Chiefs) quashed the writ. Mark the result: the next day the defendant sailed for Boulogne and has ever since continued in France, and the plaintiff, an English tradesman, lost his debt of 400*l.* to 500*l.*

CIVIS.

## CLASSIFICATION OF DOCUMENTS AND PAPERS.

In arranging papers in daily use, it is desirable to class them according to the first vowel in the name of the client:—the papers of Mr. Blackstone will be classed upon the table or desk, or in divisions, under A,—that being the first vowel in his name. Papers belonging to Mr. Bernardiston will be placed under E, that being the first vowel in his name. By the adoption of this mode of arrangement an easy reference is made to the papers wanted to be referred to.

S.

## COMMON LAW PROCEDURE ACT.

Doubtless this Act will be productive of immense advantages. I have not, however, had an opportunity of perusing it, and should be glad to be informed whether its provisions extend to enable one partner, who seeks an account of partnership transactions, as solicitor, to obtain a reference of the accounts to arbitration, and whether, in such case, a bill or claim must be previously filed, one partner refusing to deliver any account, and the horror of engaging in a suit on the old system having deterred his co-partner from adopting coercive measures.

A SOLICITOR.

[We think an action for an account might be brought, and then the Judge could order a reference. We suppose the partnership has terminated.—Ed.]

## LICENCE TO DEMISE COPYHOLDS.

There are some who would seem to treat a licence to demise almost as a nullity, but I submit that the term created by licence is a common law and not a copyhold interest. Co. Cop. s. 51, t. 2, 119, 120. The lessee may grant an underlease without any further licence or consent of the lord. Gilb. Ten. 299. For the lord's interest is discharged for so many years, and if the copyholder die without heirs yet the lessee will stand against the lord, the demise being by licence. Heb. 177, pl. 303;

6 Vin. Abr. 218, pl. 5; 1 Crd. Dig. 336, 821, 359, s. 12. It is extendible at law, Walk. notes, 148-9. Gilb. Ten. 467 & 327 contra, and may even continue after the determination of the copyhold, 2 Walk. Cop. 37, 122. Walk. or Gilb. Ten. 153, p. 469. The copyholder is the tenant. But the lord cannot notice the change of the lessee, he has a tenant independently of him, 1 Walk. Cop. 301. Mr. Jarman, no mean authority, says Mr. Watkins thinks the licence should be on condition that the real annual value should be reserved in case of forfeiture or escheat, 2 Walk. Cop. But in a building lease that could not be done easily, nor is it known to be adopted in any instance.

CIVIS.

## PROPOSED HALF-HOLIDAY ON SATURDAYS.

SIR,—As one of the numerous persons pleaded for by your correspondent "A Subscriber," on the subject of a half-holiday, in the *Legal Observer* of Saturday last, I beg leave to say a word in furtherance of that laudable object.

I am a clerk in an attorney's office in the heart of the city, where the office hours are from 9 in the morning till 6 in the evening. Being an in-door clerk, I am seldom out, and you will readily perceive I have not much time for getting fresh air (and having no wish to infringe on Sunday) I seldom see a green field, except in the Long Vacation, at which period I am allowed one week's holiday, which I spend in general by the seaside, and find the time just long enough to make me miserable on my return to London.

I entirely coincide with the views enunciated by your correspondent, that as much business would be done as is now transacted (and more cheerfully), and that the Attorneys and Solicitors of London will be doing a very great act of justice by giving an opportunity to a numerous host of hardworking men to acquire health and vigour to support them in their laborious occupation.

Thanking you for your great liberality in allowing your Journal to be the means of an attempt to alleviate our sufferings, I am, &c.

A LAWYER'S CLERK.

I find, by the *Bristol Mirror* that the Solicitors of Bristol have come to the determination of closing their offices at 1 o'clock on Saturdays.

I was much pleased on reading in the *Legal Observer* of Saturday the 12th August last, a memorial signed by a large proportion of the leading firms in the Profession, presented to the Council of the Incorporated Law Society, proposing that the hour of two o'clock on Saturdays should be considered henceforth to be the close of that day for conducting legal business in all its branches. At the foot of the memorial appears an Editorial note, that the Council have

concurred in the object of the memorial, and have referred it to a Committee to consider the means of carrying it into effect.

Now, Sir, this is the *Long Vacation*, and the most proper time for giving an impulse to the suggestions of those gentlemen who have appended their names to the memorial. It will be of little benefit to clerks to defer the object to the Winter season, for at that period of the year, very few holidays are sought for or required; and I therefore beg to submit, that all the parties who advocate the closing business at two o'clock on Saturdays, should forthwith adopt the system *de bene esse*, and thus give their clerks an opportunity of enjoying the autumnal breezes once a week, away from the bricks and mortar of London.

I most heartily concur in the views taken of the matter by "A Subscriber," in his letter which appeared in the Postscript to the Number of Saturday last, the 16th inst.

#### A MANAGING CLERK.

[The Council of the Incorporated Law Society have submitted the suggestion to the Lord Chancellor, and the Lord Chief Justices and Chief Baron.—Ed.]

### PROFESSIONAL LISTS.

#### PERPETUAL COMMISSIONER.

*Appointed under the Fines and Recoveries' Act, with date when gazetted.*

Coleridge, Francis James, Ottery St. Mary, in and for the county of Devon. Sept. 15.

#### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From 22nd August, to 22nd Sept. 1854, both inclusive, with dates when gazetted.*

Gibson, John Holmes, William Nichols, and George Gibson Nichols, late of 79, Lombard-street, and now of 63, King William-street, City, public notaries and scriveners, as far as regards the said John Holmes Gibson. Sept. 22.

Hargreaves, Henry, Thomas Ainsworth, and John Bolton, Blackburn, attorneys and solicitors. Sept. 22.

#### COUNTRY COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

*Appointed under the 16 & 17 Vict. c. 78, with dates when gazetted.*

Gray, Thomas William, Exeter, Aug. 22.

Hawker, Claudius Crigan, Boscastle, Aug. 22.

Perkins, Richard, York, Aug. 29.

### NOTES OF THE WEEK.

#### NEW MEMBERS OF PARLIAMENT.

Robert Alexander Shafto Adair and Francis Mowatt, Esquires, for the borough of Cambridge, the last election for the said borough having been declared void.

William Digby Seymour, Esq., and William Henry Watson, Esq., Q. C., for Kingston-upon-Hull, the last election for the said town having been declared void.

George Montagu Warren Peacocke, Esq., and John Bramley Moore, Esq., for Maldon, the last election for the said borough having been declared void.

Charles Manners Lushington, Esq., and the Right Hon. Sir William Meredith Somerville, Bart., for Canterbury, the last election for the said city having been declared void.

John Laurie, Esq., and Richard Samuel Guinness, Esq., for Barnstaple, the last election for the said borough having been declared void.

The Hon. George John James Gordon (commonly called Lord Haddo), for the county of Aberdeen, in the room of Vice-Admiral the Hon. William Gordon, who has accepted the office of Steward of the Chiltern Hundreds.

John Henry Gurney, Esq., for King's Lynn, in the room of Robert Jocelyn (commonly called Viscount Jocelyn) deceased.

#### ELECTION AUDITORS.

*Appointed under the New Bribery Bill.*

Hastings, Mr. G. S. Butler.

Plymouth, Mr. Thomas Ponsford.

Rye, Mr. W. D. Cooper.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

#### Master of the Rolls.

*Laxton v. Edell. June 28, 1854.*

**WILL.—CONSTRUCTION.—INTERMEDIATE INCOME BEFORE SON ATTAINED 21.**

A testator, by his will, gave his personal estate in trust to pay the rents and profits to his wife until his son should attain 21, and then to assign the same to him absolutely; and he directed that if his son should die in his wife's lifetime, she should have the property absolutely. The widow died before the son attained 21: held, that

her representatives were entitled to the rents accruing due during the minority.

THE testator, by his will, gave his personal estate to trustees in trust to pay the rents and profits to his wife until his son should attain the age of 21, and then to assign the same to such son for his own absolute use and benefit, and he directed that if his son should die in his wife's lifetime, she should have the property absolutely. It appeared that the testator's widow died before the son attained 21, and the question arose, whether her representatives were entitled to the rents accruing

due in the interval before he attained his majority.

*Stephens* for the son; *Cole* for the widow's personal representatives.

The *Master of the Rolls* said, that as the will contained no gift to the son, except a direction to pay on his attaining 21, and there was no trust for maintenance, he took no interest until he attained that age, and the widow's personal representatives were therefore entitled.

*Marsh v. Marsh.* July 8, 1854.

ADMINISTRATION CLAIM. — TRANSFER WHERE PREVIOUS SUITS IN ANOTHER BRANCH OF COURT.

*Where a bill had been instituted by an executor against his co-executor and others, in which answers had been put in, and also another bill by a legatee in the same branch of the Court, a claim by a legatee to administer the estate was directed to stand over in order to obtain the order of the Lord Chancellor for its transfer.*

It appeared upon this claim, on behalf of a legatee, for the administration of the estate of a testator, coming on for hearing, that the executor had previously filed a bill against his co-executor and other parties, in which answers had been put in, and also that another legatee had filed a bill in another branch of the Court.

*Follett* for the plaintiff, the parties being unable to agree as to which of the causes should be transferred.

The *Master of the Rolls* said, that the claim could not be heard, but he would request the Lord Chancellor to direct a transfer of the claim.

*Vice-Chancellor Kinderley.*

*Rowley v. Burgee.* July 25, 1854.

EQUITY JURISDICTION IMPROVEMENT ACT. — PAYMENT OF PART OF SHARE PENDING SUIT.

*An application on behalf of the assignee of a share of the next of kin of the deceased for payment of a portion under the 15 & 16 Vict. c. 86, s. 57, pending a suit, was refused where the petition consequent on an arrangement would shortly be disposed of.*

THIS was an application under the 15 & 16 Vict. c. 86, s. 57, on behalf of an assignee of

<sup>1</sup> Which enacts, that "Where any real or personal property shall form the subject of any proceedings in the Court of Chancery, and the Court shall be satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such suit, it shall be lawful for the said Court at any time after the commencement of such proceedings to allow to the parties interested therein, or any one or more of them, the whole or part of the annual income of such real

the next of kin of the deceased, for the payment of a portion of the share. It appeared that a suit had been instituted to administer the estate, and that the next of kin had come to an arrangement, and the petition under which it was to be effected was in the paper for hearing with the cause.

*Marslake* in support; *Baily*, contra.

The *Vice-Chancellor* said, that the Act was only intended to apply where there would be considerable delay in disposing of a cause, and not to a case like the present; and the application would therefore be refused.

*Balguy v. Broadhurst.* August 4, 1854.

SECURITY FOR COSTS ON APPOINTMENT OF FEMALE CO-PLAINTIFF AS NEXT FRIEND.

*In a suit by the wife and children against the trustees of a settlement, charging a breach of trust, one of the children, a plaintiff, was appointed next friend on the former next friend going out of the jurisdiction: Held, that she must give security for costs.*

It appeared in this suit, by the wife and children against the trustees of a settlement, charging a breach of trust, that the next friend had gone out of the jurisdiction, and that one of the plaintiffs, who had attained her majority, had been appointed next friend in his stead, and the question arose, whether she must give security for costs.

*Amphlett* and *G. Lake Russell* for the several parties.

The *Vice-Chancellor* said, that security for costs must be given.

*Vice-Chancellor Wood.*

*Hughes v. Wells.* June 25, 1854.

TRUSTEES' ACT, 1850 — FORM OF VESTING ORDER.

*An application was granted to preface a vesting order under the 13 & 14 Vict. c. 60, with these words: "It appearing to the Court that — was a trustee within the meaning of the Act, and had died without an heir."*

It appeared that a vesting order had been obtained in this case under the 13 & 14 Vict. c. 60, and this application was now made that the order might contain a declaration as follows: "It appearing to the Court that — was a trustee within the meaning of the Act, and died without an heir," &c.

*J. V. Prior* in support.

The *Vice-Chancellor* granted the application:

property, or a part of such personal property, or a part of the whole of the income thereof, up to such time as the said Court shall direct, and for that purpose to make such orders as may appear to the said Court necessary or expedient."

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

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SATURDAY, OCTOBER 7, 1854.
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### PROPERTY OF THE INNS OF COURT AND CHANCERY.

#### NATURE OF THE TRUST AND APPLICATION OF THE FUNDS.

In the last and present Number we have given a full report of the debate which took place last Session in the House of Commons on the state of the Inns of Court and Chancery. The resolution of the House in favour of the proposed reform was followed by a Royal Commission of Inquiry. The principal object of the measure is, to ensure a sound legal education. We trust, also, that besides this express end and purpose of the Commission, there will result other advantages to the Profession, and that whilst the young are better prepared for their examination and their call to the Bar or admission on the Roll, the Practitioners of the law will be aided and assisted in the discharge of their professional duties, by collecting and circulating the best works on all the alterations in the Law and the practice of the Courts.

It cannot be doubted that the *property* belonging to the Inns of Court and Chancery—those ancient Colleges and Halls of our great University of the Law—is held in *trust* for the use and benefit of the students and members of the Profession;<sup>1</sup> and the only question before the Commissioners, we presume, will be,—*What is the proper mode of rendering this property the most available in execution of the trust?*

Looking at the Inns of Court and Chancery collectively, it may be taken for granted that the parties beneficially interested, or the *cestuis que trustent* for whom the property is held, are,—1st. The Students at Law in

both branches of the Profession. 2nd. The Members of the Bar. 3rd. The Attorneys and Solicitors. The first points for consideration will be, whether the property, as well of the Inns of Chancery as of the Inns of Court, should be administered jointly or separately? Whether the whole should be under a united governing body, consisting of the Benchers of the Inns of Court and the Ancients of the Inns of Chancery, for the joint benefit of *both branches* of the Profession;—or whether the Benchers of the four great Societies should continue trustees for the Bar only, and the Ancients of the other Inns trustees for the second branch of the Profession?

In some respects it might be preferable to constitute, as it were, one general University, including both classes of students and both classes of practitioners;—incorporating, in fact, the whole Profession: the Bar, the Attorneys, and the Students. Thus, the Student for the Bar and the Articled Clerk or Pupil would be Undergraduates; the Attorney would hold the position of Bachelor of Laws; the Barrister that of Doctor of Laws; and the members of each of these grades would be entitled, after the regular course of study, the attendance of lectures, and passing the examination, to advance from one step to another in the several ranks of the Profession.

If, however, the two branches of the Profession were united under one governing body, the leading members of the higher grade would not only be larger in number but more influential and powerful, and it might, therefore, not unreasonably be apprehended, that they would occasionally favour “their own order,” sometimes to the prejudice of the junior or larger branch of the Profession.

<sup>1</sup> See the extracts from Fortescue, p. 424, ante.

On the other hand, the two great branches of Practice having long been kept distinct, it may be expedient to continue the same course,—leaving the funds of the Inns of Court to be applied for the benefit of the students and members of the Bar; and the funds of the Inns of Chancery for the benefit of attorneys and solicitors. There is, however, this material difference in regard to those who may be entitled to participate in the application of the revenues of the Inns of Court from those of the Inns of Chancery,—that every student for the Bar and every barrister must belong to one of the Inns of Court;—whilst the attorneys and solicitors need not be members, and very few of them are members of the Inns of Chancery. It would, therefore, be necessary and just, that in order to partake of the benefits which may be derived from a reform in the application of the funds of the Inns of Chancery, that the attorneys and solicitors shall be required to join these societies and contribute the usual dues payable by the members thereof.

The most proper and expedient course would probably be, to incorporate the whole Profession of attorneys and solicitors, and require them to become members either of one of the Inns of Chancery or of the Incorporated Law Society. In the latter, there is a very extensive Library, and there a numerous course of Lectures is delivered, and the Examination takes place. The members of the Inns of Chancery as solicitors, have largely contributed to the formation of that useful Institution.

A moderate fee on admission, and a small annual subscription, would be sufficient, not only for the purpose of effecting the suggested improvements in Education, by increasing the Library and instituting new Courses of Lectures adapted for the use of the practising solicitor, but to supply the members with useful works, and ultimately, we hope, to provide a fund for the relief of the aged and unfortunate but meritorious members.

We presume that in the reforms which are contemplated, there can be no intention to displace the heads of either class of these “ancient and honourable societies.” Whatever changes may be recommended will be best carried into operation by the “*Benchers*” of the Inns of Court on the one hand, and the “*Ancients*” of the Inns of Chancery on the other. The rights of property, and the privileges of the members of the respective societies will, of course, remain untouched.

The reforms which have been effected on are projected in the Universities of Oxford and Cambridge, and in the corporation of the city of London, have been conducted with due regard to the vested rights and just interests of those institutions; and we cannot entertain the slightest apprehension that the excellent and learned Judges, and other eminent Commissioners, who are delegated to conduct the inquiry and report their opinion, will come to any conclusion adverse to the true interests and welfare of their brethren.

The Commissioners will, of course, without loss of time, procure the fullest information on the state of the revenues of the Inns of Court and Chancery, and the application thereof. We may venture to suggest the expediency of adopting the course taken by most of the other Royal Commissioners in issuing a *series of questions* to be answered by the several authorities of the Inns of Court and Chancery,—by eminent members of the Bar,—by solicitors of experience,—and by the several Law Societies. Thus the Commissioners would have before them many valuable suggestions, which would essentially aid them in arriving at a satisfactory conclusion,—at once meeting the approbation of the public, and the cordial support of the Profession.

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#### INNS OF COURT AND CHANCERY DEBATE.

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THIS important debate was concluded as follows:—

The *Attorney-General* was anxious to take an early opportunity of stating that he gave his most ready and cordial assent to the proposal of the right hon. and learned gentleman (Mr. Napier). It was unnecessary for him to go into the origin of the Inns of Court. It was quite enough that the Inns of Court had had committed to them the preservation, control, and superintendence of the Legal Profession, to entitle the House to enter upon a thorough inquiry into their constitution and the means they possessed. He agreed with the right hon. and learned gentleman that the country had a deep interest in the proper maintenance and high character of the Legal Profession. There were none who might not have occasion to come to them for assistance and service.—From the body of the lawyers the judicial body were taken—and their character was, upon every ground, matter of public concern, in which the public were interested. But at the same time, he must say that he did not anticipate from the appointment of the commission those great results which the right hon. and learned gentleman seemed to expect. If the present state of legal

Education resembled that which existed when the right hon. gentleman first became a member of the Profession, it would indeed be a matter of paramount necessity that such a commission of inquiry should issue. But hon. members must not overlook all that had been done of late years to place legal education upon a sound basis. No less than five public professorships had been founded within the last few years, namely—the professorship of civil law and general jurisprudence, the professorship of common law, the professorship of real property, the professorship of equity, and the professorship of constitutional law and legal history. All these professorships had been supplied with funds, and although examinations were not compulsory, still an experiment had been tried and a great step had been taken. There could be no doubt that the governing bodies of the Inns of Court were most anxious in their desire to place legal education upon a sound and satisfactory footing. When he reminded the House that what had already been done had the sanction of such names as those of the Master of the Rolls, Sir P. Wood, Lord St. Leonards, Sir K. Bruce, and others of similar position, he need not say that the matter was in admirable hands. Studentships had been founded and a great deal had been done. The matter was in safe keeping, but the right hon. and learned gentleman thought a commission ought to issue. Be it so. One result, at least, would follow from the appointment of a commission, since it would dissipate a great deal of misconception relative to the revenues and resources of the Inns of Court, and the application of those revenues to the purposes of legal education. There was but one feeling among the Benchers of the Middle Temple—of whom he was one—on this subject, and they had deputed him to say that they should be most happy to give every possible assistance to the commission. A similar feeling was expressed by the Benchers of the Inner Temple, and the hon. and learned member for West Suffolk (Sir F. Kelly) the Treasurer of Lincoln's Inn, had authorised him to say that the same feeling pervaded that body. The governing bodies of the Legal Profession would cheerfully receive suggestions and cordially adopt any measures which would raise the character of the Legal Profession. At this time of day, when public bodies and institutions were subjected to a searching inquiry, it would ill become the Inns of Court to offer the least opposition to inquiry. It did public bodies good to let light and air into their proceedings. This was the case with the Universities of Oxford and Cambridge, and, when the time came for a similar inquiry into the University of Dublin, he hoped the right hon. and learned gentleman would be as ready to acquiesce in such an inquiry as the Inns of Court had been to acquiesce in the motion of the right hon. and learned gentleman.

Mr. R. Phillimore wished to express his opinion, that until the examinations of students

became compulsory no good would be done. The branch of the Profession to which he had long had the honour of belonging had given to the world Lord Stowell, who was a powerful illustration of the advantages which attended the cultivation of the science of jurisprudence. That learned lord had studied the principles of jurisprudence in almost every language, and was regarded as one of the greatest authorities who ever lived.

The *Solicitor-General* said, he should be sorry to allow this subject to pass by without making a few observations; and, in the first place, he wished to express the gratitude which he, and he was sure the whole of the Profession, must feel to the right hon. gentleman for the manner in which he had brought forward this important question. But he could not agree in the opinion expressed by his hon. and learned friend the Attorney-General, that the subject should be left entirely to the Inns of Court themselves. It was an undoubted fact, that those learned bodies had done something in the way of reform, but what had been effected was mainly through the students themselves, who were very anxious to obtain instruction, and who were endeavouring, as far as possible, to reap the benefit of the institutions which had been founded, and which, unquestionably, of late had been placed on a very wide basis. It was now about eight or nine years since he first drew the attention of the Inns of Court to the neglect of those great duties which he considered it was incumbent upon them to discharge. In 1832, a Committee having been appointed, a more liberal system, but one by no means adequate to the wants of the students, was framed; but he thought it was their duty to extend as much as possible, the legal education of the whole body of the people. With respect to all their other institutions, they invited the people of the country to take part in the administration of the law, and it was their bounden duty, therefore to give them the means of obtaining a general knowledge of the principles of the law. The Universities had for a long time been neglectful, and the Inns of Court, he said, had shared in that neglect, and the only thing he regretted on the present occasion was that the terms of this motion were not a little more comprehensive. He should like to see the Inns of Court erected into one great legal university, for the purpose not merely of promoting the education and legal instruction of the Profession, but for the purpose of co-operating with the Universities of Oxford, Cambridge, and London for the public good. He hoped to see the time when, in the great scheme for the improvement of the seats of learning and the Courts of the country, there would be found departments in which a degree—manifesting the attainment of some knowledge and some experience in the law, and which degree would be requisite to give a position at the Bar—should be granted as the reward of study and genius. He, therefore, hoped that there would be introduced into the

Universities of Oxford and Cambridge a system of general instruction in jurisprudence and the law, and that the Inns of Court might be erected into a public institution to perfect and carry into practice that course of knowledge and study which a certain number of persons might have commenced at the universities. At present the universities admitted of the education of a limited number only, but a large class would like to resort to a school of law if it were established upon the basis which it ought to be in this country. It was with some shame that he had ascertained the unfavourable position we were in, contrasted with France. In Paris alone the number of professors reading in the different departments of the law, with a view to the education of the people at large, was more than three times the number lately established in this country.—Nor was this confined to Paris, but in eight of the large municipal towns were established local universities or large public schools for the teaching of the law. Nothing of the kind existed in this country, but he hoped the time was not far distant when so pressing a want would be supplied. But he should be sorry if the House were to be impressed with the opinion that the Inns of Court continued in a state of insensibility as to the present want which was everywhere making itself felt. The Inns of Court were valuable national institutions, invested for the public service with certain rights, and having corresponding duties and obligations to discharge, and, in his opinion, the manner in which those duties and those obligations ought to be discharged would be a very proper subject for inquiry by this House; and if it should be necessary to give them additional powers for the more extensive and efficient discharge of their duties, there could not be a fitter occasion on which to do so than the present. He trusted, with the right hon. gentleman who had brought this matter forward, that it would not only receive attention in proper quarters, but that the Commission would be directed to the attainment of still greater ends than those it was more immediately proposed to attain by it: but he would mention, in justice to the Inns of Court, that, in addition to the nine studentships, four of which entitled the holders to 50 guineas a year, and were conferred as prizes for the greatest proficiency, there was also given to the Council of Legal Education, over which he had the honour to preside, power to grant certificates of honour, which entitled the recipients to some standing in the Inns of Court, and in that Profession to which it was probable they would eventually belong. A good basis had therefore been established, and all that was wanted was a compulsory examination, which, in his opinion, was an essential requisite to the perfection of any system. In addition to the things he had mentioned, there were a number of professorships, which would give great facilities to all who wished to obtain that education which was absolutely necessary to those whose intention it was to go to the Bar. The

state of the law of this country, on many occasions, was such as to cause great regret at this limited knowledge the English barrister possessed on many points which became the object of inquiry, and whoever was conversant with the administration of the law with respect to railways, when they first became regularly established, must have observed with regret and with shame that there was an entire want of knowledge with regard to the law as it affected those companies; the consequence was, the adjudication of cases in the Courts of Law first set in one current and then in another, introducing a variety of conflicting decisions with respect to such cases, and a degree of uncertainty and confusion greatly to be deplored. This state of things was to be attributed in a great measure to that want of instruction in original principles which, he must say, had hitherto been characteristic of English juriconsults, but which he hoped would no longer continue to exist.

Mr. Bowyer said, that being one of the readers to the inn to which the Solicitor-General belonged, it gave him much pleasure to be able to state that many of the improvements introduced had resulted from the labours of that learned and hon. gentleman. He was glad to find that the learned Solicitor-General dissented from the opinion expressed, that it would be better to leave the matter where it was. Nothing in the way of improvement would ever be done so long as people were satisfied with things as they were. In his opinion very little had yet been done, for when he referred to the report of the Committee of the Council of the Inns of Court on Legal Education, he found the stipend of each reader was to be 300 guineas per annum, which he contended was not sufficient for the payment of persons who performed such important duties in reference to legal education. They were told that the revenues had been overrated, but they had had no means of judging, as the amount had hitherto been kept secret from the Public and the Bar; but he believed it would be found quite sufficient, not only to remunerate readers more handsomely, but to dispense with the fee of five guineas paid by students on their admission to the lectures, which fee, he contended, was a great hardship upon the young men, and operated as a discouragement to persons anxious to obtain a legal education. He pointed to Germany and other countries, as affording a great contrast to ours with respect to the study of jurisprudence,—a science which, in his opinion, it was of the greatest importance to cultivate. If they had a body of professors they would be found of the greatest service in a subject which more and more engaged the attention of Parliament—he meant the proper revision of Acts of Parliament. He said, a body of professors, competent to assist in drawing up Acts, and to point out what in each case would be the best method of attaining the particular object the Legislature had in view, would be of the greatest use. They could be always referred to by the Go-

vernment, would render assistance to the law officers of the Crown, and might be referred to for their opinion in matters of public importance, or on any difficult points of international law. He thought there ought to be a thorough examination into the revenues of the Inns of Court, and that the public ought to be informed, not only what they amounted to, but how they were applied, in order that the object for which these Inns of Court were established—namely, the promotion of legal education among the people—should be secured.

Mr. V. Scully said, that the object of this Commission would be, that any illusion as to the enormous revenues of the Inns of Court would be dissipated. They would know what those revenues were. If they were adequate they would be applied in a proper manner, and if they were not adequate for the purposes for which they were intended they might be made so. He hoped the result would be a system of examination attended by rewards to students who had distinguished themselves, and also by disqualification if that were necessary. They ought also to have a proper system of legal education, such as that the Solicitor-General had expressed his approval of, and he trusted that the recommendations of this Commission would not be allowed to lie dormant, but would be at once acted upon. He wished to enforce on the Solicitor-General the necessity of completing the reform on this question at once, so as to render no supplemental measures necessary.

Mr. Hadfield earnestly hoped, that the proposed measure might be one of a liberal tendency, as he thought the time had arrived when the major part of her Majesty's subjects should be no longer excluded from these educational institutions, but that free access should be given to all who claimed to be instructed. He hoped, therefore, some plan would be adopted to throw open the universities, and that that reform would extend to the removal of all tests and difficulties which at present existed, whereby many persons who possessed conscientious scruples were prevented from taking the benefit of those institutions.

Mr. Craufurd was rejoiced to find so great a unanimity on the part of the hon. and learned gentlemen who had spoken on the subject with respect to the necessity of these reforms; and he considered it greatly to the credit of the Government that they had so readily acceded to them. Notwithstanding, however, the eulogium which had been passed by one right hon. and learned gentleman upon the Inns of Court, it was his opinion that no corporation in the kingdom had committed grosser breaches of trust than those same inns; for he found, on reference to history, that they were founded for the purposes of lodging students and instructing them in the laws of England. It had been stated by the hon. member for Dundalk that they had no means of arriving at any judgment as to the revenues; but, from a return which he had moved for last Session, he was able to form some approximate idea, although

he could not state the exact sum. From the information furnished by that return, he was able to make a calculation which led him to estimate that the revenue derived annually from the rent of chambers alone by the four Inns of Court amounted to no less a sum than 87,680*l.* per annum; which was all originally derived from the ground they held in trust for the use of the law students, and for which land they only paid a nominal sum. How then did they discharge their trust properly when they demanded such an immense sum of money for chambers that the loss from those unoccupied he estimated at 1,200*l.* a year. They also charged expensive fees on the granting of the degree of barrister, and demanded, besides, from each student fees to the amount of 35*l.*, in addition to the 100*l.* caution-money deposited as security, while the students were eating their terms, the interest of which was gained by them. He calculated that, from all sources, they derived a revenue amounting to nearly 100,000*l.* a year—a sum far more than sufficient to provide for the legal education of every student who went there. He had no doubt the commission would be attended with very good results; but he, with other members, regretted that it was not so comprehensive as to enable it to inquire into the conduct of the Inns of Court, and the way in which they had discharged their duty.

Mr. Napier, in reply, corrected a misapprehension of the Attorney-General with respect to the University of Dublin; that university had, immediately after Mr. Wyse's committee instituted professors of general law and civil jurisprudence, and there had not been any university in the United Kingdom that had gone so far to meet the spirit of the times as that one had.

The motion was then agreed to.

[It will be observed that not a word was said, in the course of the debate, on the education of Attorneys and Solicitors, and though the resolution includes the Inns of Chancery, we hear nothing of the mode in which it is proposed to interfere with the revenues of those Societies.—Ed.]

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts of the present Session printed in the present Volume, with an Analysis to each, will be found at the following pages:—

Income Tax, cc. 17, 24, pp. 46, 131, *ante*.

Commons' Inclosure, c. 9, p. 64.

County Court Extension, c. 16, 121.

Registration of Bills of Sale, c. 36, p. 216.

Warwick Assizes, c. 35, p. 218.

Attendance of Witnesses, c. 34, p. 235.

Evidence in Ecclesiastical Courts, c. 47, p. 254.



Commons' Inclosure (No. 2), c. 48, p. 254.  
 Cruelty to Animals, c. 60, p. 275.  
 Ecclesiastical Jurisdiction, c. 65, p. 276.  
 Highway Rates, c. 52, p. 276.  
 Turnpike Trusts' Arrangements, c. 51, p. 276.  
 Admiralty Court, c. 78, p. 295.  
 Borough Rates, c. 71, p. 298.  
 Acknowledgment of Deeds by Married Women, c. 75, p. 299.  
 Stamp Duties, c. 83, p. 317.  
 Court of Chancery, c. 100, p. 334.  
 Bankruptcy, c. 119, p. 335.  
 Real Estate Charges, c. 113, p. 339.  
 Common Law Procedure Act, 1854, c. 125, pp. 356, 376.  
 Usury Laws Repeal, c. 90, p. 396.  
 Bribery Act, c. 102, pp. 397, 415.  
 Youthful Offenders, c. 86, p. 418.

COURT OF CHANCERY, COUNTY PALATINE  
 OF LANCASTER.

17 & 18 VICT. c. 82.

The Preamble recites the 13 & 14 Vict. c. 43.

Formation of Court of Appeal in Chancery of the County Palatine; (s. 1).

Powers, &c., of Court of Appeal may be exercised by Lords Justices, &c. Saving rights of the Chancellor sitting alone; (s. 2).

Decrees, &c., of the Court of Appeal may be appealed from to the House of Lords; (s. 3).

Decision of the majority to be binding, and if Court equally divided decree to be affirmed; (s. 4).

Court of Appeal to make regulations for sittings and business of the Court, and officers now attendant on the Chancellor in matters of appeal to be the officers of the Court of Appeal; (s. 5).

Powers given by the recited Act to the Chancellor, with the advice and consent of the Vice-Chancellor of the County Palatine and one of the Vice-Chancellors of the High Court of Chancery, to be exercised with the advice and consent of the Lords Justices of Appeal in Chancery and the Vice-Chancellor of the County Palatine; (s. 6).

Court of Appeal may make orders for the protection of wards or other persons entitled to the protection of the Court of Chancery of the County Palatine, and for punishment of contempt of Court, to have the effect of orders of the High Court of Chancery; (s. 7).

In cases where parties are out of the jurisdiction, Court of Appeal may either direct the cause or matter to be transferred to the

High Court of Chancery or service to be effected out of the jurisdiction; (s. 8).

Suits transferred to be proceeded with according to the practice of the Court of Chancery, &c.; (s. 9).

Provisions of recited Act as to enforcing decrees, &c., of Court of Chancery to apply to Court of Appeal; (s. 10).

All the powers and authorities of the Trustee Act, 1850, and the 15 & 16 Vict. c. 55, shall extend to lands and personal property in the County Palatine; (s. 11).

Powers of Court of Chancery to deal with property of infants, &c., and in the administration of assets to be exercised by Palatine Court; (s. 12).

Monies payable under 13 & 14 Vict. c. 43, s. 12, into the Bank of England may be paid into branch bank within the County Palatine; (s. 13).

Provision as to costs and Appeal; (s. 14).  
 Short titles; (s. 15).

The following are the titles and sections of the Act:

An Act further to improve the Administration of Justice in the Court of Chancery of the County Palatine of Lancaster.

[7th August, 1854.]

Whereas an Act was passed in the Session of Parliament 13 & 14 Vict. c. 43, intitled "An Act to amend the Practice and Proceedings of the Court of Chancery of the County Palatine of Lancaster: and whereas according to the present practice the jurisdiction in matters of appeal from the said Court of Chancery is exercised by the Chancellor of the Duchy and County Palatine of Lancaster in the Court of the Duchy Chamber at Westminster, and sitting with two Judges of assize for the said county for the time being; and such exercise of the said jurisdiction has been attended with much expense and inconvenience, and it is expedient to provide for the exercise thereof in a more convenient manner, and also to make further provision for the administration of justice in the said Court of the County Palatine: be it enacted as follows:—

1. The Chancellor of the Duchy and County Palatine of Lancaster and the two Lords Justices of the Court of Appeal in Chancery shall form the Court of Appeal in Chancery of the said County Palatine.

2. All the jurisdiction, powers, and authorities of the Court of Appeal may be exercised either by one only of the said Lords Justices and the Chancellor of the said Duchy and County Palatine, sitting together as such Court of Appeal, or by both of the said Lords Justices sitting as such Court apart from the Chancellor of the said Duchy and County Palatine: provided always, that the Chancellor of the said Duchy and County Palatine may, while sitting alone or apart from the said Lords

Justices, have and exercise the like jurisdictions, powers, and authorities as might have been exercised by the Chancellor of the said Duchy and County Palatine sitting alone, if this Act had not been passed.

3. All decisions, decrees, or orders of the Court of Appeal shall be subject to appeal to the House of Lords in the cases and under the conditions in and under which the like decisions and decrees or orders of the Chancellor of the said Duchy and County Palatine, sitting alone, or together with any other person or persons, would have been subject to such appeal if this Act had not been passed.

4. The decision of the majority of the Court of Appeal shall be taken and deemed to be the decision of the said Court; and if the Judges of the Court be equally divided in opinion on any cause or matter brought before the Court by way of appeal, the decree or order appealed from shall be taken and deemed to be affirmed.

5. The Court of Appeal shall make such regulations as may from time to time be necessary for fixing and regulating the sittings and business of the Court; and the registrar and other officers who, according to the existing practice, are attendant upon the Chancellor of the said Duchy and County Palatine in matters of appeal in his Chancery shall be the registrar and officers of the Court of Appeal, and shall be in like manner attendant upon the said Court of Appeal: provided always, that any order of the said Court of Appeal may and shall be drawn up by any registrar of the High Court of Chancery, if so directed by the said Lords Justices or either of them.

6. Whereas it was enacted by the first section of the said recited Act that it should be lawful, from and after the passing of the said Act, for the Chancellor of the Duchy and County Palatine of Lancaster for the time being, with the advice and consent of the Vice-Chancellor of the said County Palatine for the time being, and one of the Vice-Chancellors of the High Court of Chancery, to be named for that purpose by writing under the hand of the Lord High Chancellor or other officer having the custody of the great seal, or (if more than one) of the Chief Commissioner or officer having such custody, by any rules or orders to be by him from time to time made, with such advice and consent as aforesaid, to make such alterations as to him might seem expedient in the form of writs and commissions, and the mode of sealing, issuing, executing, and returning the same; and also in the form of and mode of filing bills, answers, depositions, affidavits, or other proceedings; and in the form or mode of obtaining discovery by answer in writing or otherwise; and in the form or mode of pleading and of taking evidence; and generally of proceeding to obtain relief in the Court of Chancery of the said County Palatine, and in the general practice of the said Court; and also in the form and mode of proceeding before the registrar of the said Court; and of drawing up, entering, and enrolling orders and decrees, and of making and delivering copies

of pleadings and other proceedings; and also to regulate the taxation, allowance, and payment of costs, and all other the business of the said Court: be it enacted, that all the powers thereby given to the Chancellor of the said Duchy and County Palatine of Lancaster shall not, from and after the passing of this Act, be exercised with such advice and assistance as aforesaid, but shall be exercised with the advice and consent of one of the Lords Justices of Appeal in Chancery for the time being and the Vice-Chancellor of the said County Palatine for the time being.

7. In all cases in which, by reason of any person being out of the jurisdiction of the Court of Chancery of the said County Palatine, or otherwise, effectual protection cannot be given to any ward of the said Court, or to any executor, administrator, officer of the Court, or other person entitled to the protection of the said Court, against any action, suit, or other proceeding, or in which, for the same reason or otherwise, any contempt of the said Court cannot be effectually punished, it shall be lawful for the Court of Appeal, upon the application of any person concerned, to make such order or orders for the protection of such ward, or of such executor, administrator, officer of the Court, or other person as aforesaid, or for the punishment of any such contempt, as to the said Court of Appeal shall seem just, and according to the practice of the High Court of Chancery in like matters; and every such order shall have the same operation and effect as an order of the High Court of Chancery, and shall and may be enforced, and all proceedings shall and may be had thereupon, as if the same had been made by that Court.

8. In all cases in which any person who may be a necessary or proper party to any suit or other matter in the Court of Chancery of the said County Palatine shall not be subject to the jurisdiction of the said Court, it shall be lawful for the Court of Appeal, on the application of the plaintiff in such suit, or of any person to whom the conduct of such suit may have been committed, or of the party proceeding in such other matter, if that Court shall think fit, and according as it shall appear to that Court best calculated to answer the ends of justice, either to order and direct that the said suit or other matter be transferred to the High Court of Chancery, or otherwise to order and direct that such service as may be proper be effected upon such person out of the jurisdiction of the said Court of the said County Palatine, and such application shall be made either *ex parte* or upon such notice as the said Court of Appeal shall think fit: provided, nevertheless, that if such order for service shall have been made without notice to any person affected thereby, it shall be lawful for the Court of Appeal, upon the subsequent application of any such person, to make such order for transferring the said suit or other matter to the High Court of Chancery, or otherwise, as to the said Court of Appeal shall seem just.

9. In case such suit or matter shall be di-

rected to be transferred as aforesaid, all proceedings therein shall be transmitted by the officer of the Court of the said County Palatine to the proper officer of the High Court of Chancery, to be filed, and the same shall thereafter be proceeded with according to the practice of that Court; and in case service shall be directed as aforesaid, the same shall be of such and the same force and effect, and such and the same proceedings may be had thereupon, as if service had been duly effected within the jurisdiction of the said Court of the said County Palatine.

10. The provisions in the said recited Act contained for enforcing decrees and orders made by the Court of Chancery of the said County Palatine, by making them decrees or orders of the High Court of Chancery, shall extend and apply to decrees or orders made by the Court of Appeal.

11. And whereas by the 21st sect. of the Trustee Act, 1850, it was enacted, that as to any lands situated within the County Palatine of Lancaster it should be lawful for the Court of Chancery in the County Palatine of Lancaster to make a like order in the same cases as to any lands within the jurisdiction of the same Court as the Court of Chancery has under the provisions therein before contained been enabled to make concerning any lands, and that every such order of the Court of Chancery in the County Palatine of Lancaster should, as to such lands, have the same effect as an order of the Court of Chancery: provided always, that no person who is anywhere within the limits of the jurisdiction of the High Court of Chancery should be deemed by such local Court to be an absent trustee or mortgagee within the meaning of that Act: and whereas by an Act of the 15 & 16 Vict. c. 55, the provisions of the Trustee Act, 1850, were in some respects amended, and further and other provisions made: and whereas several provisions of the said Trustee Act, 1850, subsequent to the 21st section, and the provisions of the said Act of the 15 & 16 Vict. c. 55, are applicable and ought to be applied to persons and property within the jurisdiction of the said Court of Chancery of the County Palatine of Lancaster: and whereas by the 11th section of the said Act of the 13 & 14 Vict. c. 43, it was enacted, that when, under and by virtue of any Act of Parliament made and passed, or which might thereafter be made and passed, or by any orders or regulations made in pursuance thereof, application is authorised or allowed to be made by petition or motion, or otherwise, to the High Court of Chancery, or any Judge of the said Court, and summary jurisdiction to be exercised thereon (unless in any Act of Parliament to be thereafter passed the contrary should be expressly enacted), it should be lawful for the Court of Chancery of the said County Palatine, so far only as regards all persons and property within its jurisdiction, to exercise the like summary jurisdiction, and in the same manner and subject to the same restrictions in all respects as the said High Court of Chancery or any

Judge thereof might exercise in the like matters: but whereas doubts are entertained as to the extent of the jurisdiction of the said Court of Chancery of the said County Palatine with respect to trust estates within the said County Palatine, so far as relates to the provisions of the said Trustee Act of 1850, subsequent to the 21st section, and to the provisions of the said Act of the 15 & 16 Vict. c. 55: be it enacted, that all the powers and authorities given by the said Trustee Act of 1850, and by the said Act of the 15 & 16 Vict. c. 55, to the Court of Chancery in England, and all the provisions therein contained, shall and may be exercised in like manner, and are hereby given and extended to the said Court of Chancery of the said County Palatine, with respect to all lands and personal estate within the said County Palatine: provided always, that no person who is anywhere within the limits of the jurisdiction of the High Court of Chancery shall be deemed by the Court of Chancery of the said County Palatine to be an absent trustee or mortgagee within the meaning of the said Acts.

12. When under or by virtue of any Act of Parliament already made and passed or which may hereafter be made and passed power and jurisdiction are or shall be given to the High Court of Chancery to manage, dispose of, or deal with the property of infants or other persons under disability, or to manage, dispose of, or deal with property in the administration of assets, then and in every such case (unless in any Act the contrary be expressly enacted) it shall be lawful for the Court of Chancery of the said County Palatine, so far only as regards all persons and property within its jurisdiction, to exercise the like power and jurisdiction in the same manner and subject to the same restrictions in all respects as the said High Court of Chancery might exercise in the like matters.

13. And whereas by the 12th section of the said Act of the 13 & 14 Vict. c. 43, it was enacted, that all monies payable in respect of lands situate within the said County Palatine, and which are authorised to be paid into or deposited in the Bank of England to the account of the accountant-general of the High Court of Chancery, under and by virtue of the Lands' Clauses' Consolidation Act, 1845, or any local or special Act passed or to be passed incorporating the provisions of the said last-mentioned Act, or otherwise authorising the taking or using of lands situate in the said County Palatine, and also that all monies and securities held by any party who might be sued in the Court of Chancery of the said County Palatine in respect thereof, and which, under and by virtue of an Act made and passed in the Parliament held in the 10 & 11 Vict., intituled "An Act for better securing Trust Funds, and for the Relief of Trustees," might be in like manner paid or transferred into or deposited in the Bank of England to the account of the said accountant-general, might, from and after the passing of the said Act now in recital, be

in like manner paid or transferred into or deposited in the Bank of England, to the joint account of the clerk of the Council of the Duchy of Lancaster and of the registrar and comptroller of the said County Palatine Court, in the matter in respect whereof such payment, transfer, or deposit should be made, and that the receipt of one of the cashiers of the said bank should be a full discharge to the person paying or transferring or depositing the same, and that such monies and securities, and all costs of application in respect thereof, should be dealt with by the said Court of Chancery of the County Palatine in the same manner as the same might be dealt with by the High Court of Chancery, or by the Lord High Chancellor, or any of the Judges of the said High Court, if such monies or securities had been paid or transferred into or deposited in the Bank of England to the credit of the accountant-general of that Court, and the lands in respect of which such payment, transfer, or deposit should be made might be dealt with in the same manner as if it had been made in manner prescribed by the Lands' Clauses' Consolidation Act: and whereas since the passing of the said recited Act the said County Palatine has been divided into districts, and registrars and comptrollers have been appointed for such districts respectively: be it enacted, that any monies and securities to be paid or transferred or deposited under the said recited provision may be so paid or transferred into or deposited with some one or other of the branches of the Bank of England within the said County Palatine, to the joint account of the clerk of the Council of the Duchy of Lancaster and the registrar and comptroller of the district within which such branch bank is so situate, and the receipt of the manager, or agent, or cashier of such branch bank shall be a full discharge to the person paying or transferring or depositing the same, and such payment, transfer, or deposit shall have the same force and effect as any payment, transfer, or deposit made under the said recited provision would have had: provided always, that no moneys shall be so paid or deposited under or by virtue of the Lands' Clauses' Consolidation Act, 1845, or any local or special Act as aforesaid, in case the party who would have been entitled to the rents and profits of the lands in respect of which such monies shall be payable, or his or her guardian or committee in case of infancy or lunacy, shall at any time before such payment or deposit serve or cause to be served a notice in writing at the office of the company taking the lands, requesting them not to make the payment or deposit.

14. In all proceedings under and by virtue of this Act the said Court of Chancery of the County Palatine and the Court of Appeal hereby constituted respectively shall have full jurisdiction to deal with the costs thereof and occasioned thereby, and all orders made by the said Courts respectively, in pursuance of this Act, shall be subject to appeal in the same manner in all respects as any other orders of

the said Court of Chancery of the said County Palatine.

15. Whenever it shall be necessary to cite or refer to the said first-recited Act or this Act, it shall be sufficient to cite or refer to the same respectively as the "Court of Chancery of Lancaster Act, 1850," and as the "Court of Chancery of Lancaster Act, 1854."

## NINE CRIMINAL LAW BILLS.

### REPORT OF THE SELECT COMMITTEE OF THE HOUSE OF LORDS.

THE Select Committee of the House of Lords appointed to consider the Nine Criminal Law Bills, with the Letters of the Judges to the Lord Chancellor, reported on the 11th August, as follows:—

"That the Committee have met, and considered the several Bills and other matters referred to them, and have not thought it necessary to enter into the discussion of the advantages and disadvantages of attempting to reduce the whole Criminal Law into one Code, nor to enter into a detailed examination of the particular merits of the Bills now before them, because, after mature consideration, they are of opinion that it is inexpedient at present to press forward any Digest, except that of Statute Law, as on every account the step first to be made.

"The Committee, however, are of opinion, that great advantage may be derived from the very important and elaborate reports of the Criminal Law Commissioners, and from the Bills already prepared, and from the introduction of others relating to as many of the remaining branches of the Criminal Law as are not affected by the present Bills, in which the Criminal Law, as defined by statutory enactments, should be consolidated; and in such Bills the Committee recommend that advantage should be taken of the valuable recommendations of the Criminal Law Commissioners for the improvement and simplification of the existing law, and that such further improvements as may appear necessary should also be added.

"And the Committee therefore recommend, that the present Bills should be revised, and others prepared, for the purpose of carrying into effect the above objects, whereby the whole Statute Law relating to Crime shall be completely consolidated, together with such amendments and additions as may be considered

expedient, and from which the Committee are satisfied great advantage may be expected.

"And the Committee further think that it will be advisable, after such Bills may have been passed, to take into consideration the report of the Commissioners on Procedure, and so to revise and amend the same, that the whole course of Criminal Procedure may be embodied in one or more Statutes."

## POINTS IN EQUITY PRACTICE.

### INCUMBRANCER PENDENTE LITE, PARTY TO SUIT TO RECOVER FUND.

*Held*, that an incumbrancer *pendente lite* is not an indispensable party to a suit to recover the fund. *Macleod v. Annesley*, 16 Beav. 600.

### EX PARTE ORDER TO AMEND PENDING APPEAL.

When a demurrer has been overruled, and an appeal from the order is pending, *held*, that an *ex parte* order to amend is irregular.

Where a plaintiff had obtained such an order, after notice that the appeal had been set down, it was discharged with costs, and the amendments were expunged. *Ainslie v. Sims*, 17 Beav. 174.

## MEDICO-LEGAL EVIDENCE.

SCARCELY any Assizes or Sittings pass without the trial of some case in which the testimony of medical men is required, regarding the cause of death, or the state of mind of the party before the Court; and in such cases the evidence is often conflicting, and it is difficult for the Court and jury to arrive at the right conclusion. In the *Journal of Psychological Medicine and Mental Pathology* for July last, we find an able lecture on "Medico-legal Evidence in cases of Insanity," delivered before the Medical Society of London, by Dr. Forbes Winslow, from which we propose to make some extracts, which we trust will be interesting to our readers.

Dr. Winslow, in treating of the circumstances in which a medical witness appears to give evidence, observes, that questions of great perplexity often arise in the course of important judicial investigations, involv-

ing matters of science upon which the Judge, jury, and counsel are incompetent, from actual want of knowledge, to form a sound and accurate judgment.

"With a view to their elucidation, men of repute, termed in France *experts*, and in Italy *periti*, who have made the matter at issue a special object of study, are called upon for their testimony, and their evidence is generally considered as final and conclusive. In a case in which it is necessary, in order to satisfy the ends of justice, to submit certain portions of food, or the contents of the stomach, to careful chemical analysis, in order to ascertain, by the aid of delicate tests, whether a person had come to his death by fair means, professional gentlemen who have a reputation for having paid particular attention to such investigations, and who are practical and experienced chemists and toxicologists, are called upon for their opinion, and upon the result of their investigations the life or death of a fellow-creature often depends. No reasonable man disputes the value of such testimony. A similar course is pursued when any difficult and complicated question arises connected with navigation, mechanics, or civil engineering. The most able men of the day are summoned to solve knotty points, and to settle questions of disputed science, which sagacious and experienced minds are only able satisfactorily to determine. For what objects are matters of great difficulty and doubt submitted to the adjudication of the Judges assembled in the highest Courts in the kingdom, if it were not to obtain from men, presumed by their elevated station to possess the *maximum* amount of legal lore, a safe and satisfactory opinion?"

Dr. Winslow complains, that medical witnesses are often treated unjustly and harshly during their examination by counsel.—

"In attempting to give the Court before which he is subpoenaed a lucid statement of his opinion, based upon actual experience, long-continued observation, reflection, and patient study, the views thus expounded are too often considered either as the offspring of a false philosophy—a mawkish sensibility—a distorted science—the affectation of a learned and metaphysical subtlety—or, alas! as the sordid result of the paltry *honorarium* awarded to him for the expression of his professional opinion! The medical witness has to encounter the sarcastic doubts, the special pleading, the suspicious innuendoes, the legal finesses, of the acute and accomplished advocate, always on the alert to perplex and confound him; he has also arrayed against him the unbending dicta of the Judge, and inexperience of the jury, easily misled by the plausible appeals, the persuasive eloquence, and *ad captandum* arguments of the counsel, who, occasionally, in the discharge of his duty as an advocate,

considers himself justified, whilst defending the interests of his client, to combat truth by sophistry—to dumb-found, confuse, and entrap the witness—dazzle and bewilder the Judge—hoodwink the jury, and, by a combination of qualities which the accomplished *nisi prius* advocate and practised disputant is so competent to call into successful operation, make the 'worse appear the better reason.'"

The lecturer admits, however, in justice to the Legal Profession, that occasionally the evidence of medical men is extremely unsatisfactory. He says,—

"It is too often the practice to place in the witness-box professional men wholly incompetent to give testimony in cases of disputed insanity;—incompetent, from ignorance of the meaning of the ordinary medical terms used to designate the recognised forms of diseased mind, as well as from inexperience in the precise bearing of medico-legal evidence. I have, in my time, seen men manifesting great self-assurance and unbounded confidence in their own knowledge and sagacity, step flippantly and eagerly into the witness-box, only to retire sadly mortified. It has been my duty to see some melancholy exhibitions of painful professional humiliation, and must admit, that in most cases they have arisen from an actual want of information on the subjects upon which the witnesses have been examined! If I were not indisposed to descend to particulars, I could refer to several recent trials for illustrations of what I have said. It is too commonly imagined that a knowledge of insanity comes by intuition, and that, without special and particular investigations of this class of affections, any well-informed and regularly educated medical man is qualified to give evidence in courts of justice upon these matters. This is a sad mistake; but, unfortunately, the discovery is rarely made until the medical man has recorded his testimony."

The imperative duty of witnesses on these occasions is then pointed out by Dr. Winslow:—

"When a medical man" (he says) "is summoned to record his testimony in a Court of Law, upon a case in which it is important to ascertain the degree of sanity that existed at any stated period, he gives his opinion to the best of his knowledge and ability, upon an *abstract* point, without any reference to ulterior results. He has not to regard the legal consequences of his evidence; it is not for the witness to consider whether life is to be prolonged to an indefinite period, or whether a fellow-being shall be immediately launched into eternity. To the questions—'Do you consider the party insane?—was he so, according to the best of your judgment, at such a period?' the medical gentleman experienced in the characteristics of insanity answers, negatively or affirmatively. If the accused party

escape punishment, as the result of his opinion—if, in consequence of the medical evidence, his life be saved—I do not see by what right he can be held up to public odium and censure. The witness is not to be considered responsible for the operation of the laws (be they good or bad), neither is he accountable for the escape of the prisoner, if acquitted on the plea of insanity, and thereby exempted from the extreme penalty awarded for his crime. The witness is sworn to state the truth according to his honest convictions, regardless of the legal results of his evidence."

The well-known Bainbrigge Will-Case, which was tried at the Stafford Assizes, is thus noticed by the lecturer:—

"This remarkable and celebrated trial was one of the most important disputed will cases which has been made the subject of litigation, in this country, for a considerable period; upon its issue depended property to a vast amount; the investigation of the facts of the case occupied more than a week; and some of the most illustrious advocates and distinguished common and equity lawyers were retained as counsel. The question at issue rested entirely upon the sanity or insanity of the testator. Evidence of a very conflicting character was adduced; the facts in relation to the alleged insanity were strangely contradictory; and it was therefore deemed necessary to bring specially from London, three physicians, who were, I presume, considered to be men of experience, sagacity, and science, to hear the sworn testimony; and, as *experts*, to state, to the best of their judgment, basing their conclusions upon the evidence adduced in Court relating to the testator's condition of mind, whether he, when the will was executed, was of a healthy, sound, and disposing intellect. Can we conceive a more important and relevant question for the medical witnesses to decide, and one coming more legitimately and strictly within their jurisdiction?"

In another part of the lecture, Dr. Winslow further comments on the important duties of medical witnesses.

"I cannot conceive a position of graver responsibility than that assumed by the medical witness when called upon in a Court of justice to give evidence in criminal cases. Let me earnestly entreat him, before discharging these solemn duties, to make himself master of all the facts of the case. He should not assume for granted the representations of those anxi-

<sup>1</sup> In this case the jury returned an unanimous verdict against the will, on the ground of insanity. Owing to some informality, the case was to be tried a second time at Stafford, and two of the former medical witnesses were subpoenaed to give evidence; but, by mutual consent, the will was declared invalid, and consequently the question did not go to trial.

ous to establish the insanity of the criminal; were he to do so, he would occasionally be sadly deceived. He should never forget that he has a *public* as well as a *professional* duty to discharge; and he is bound, as a citizen of the state, as well as a member of an important and learned section of society, to protect himself from the possibility of being deceived as to the facts of any given case presented to him for his opinion. He must not permit his feelings to overpower and interfere with the free and unclouded operations of his judgment.

"Under these circumstances, every possible influence will occasionally be exercised to induce the witness to adopt an opinion favourable to the prisoner. He will perceive the necessity of patiently investigating the case itself, and will not be satisfied with one or two interviews with the alleged lunatic. He must obtain from the criminal an account of the act with which he may be charged, and his reasons for committing it; he will also acquire from his relatives, friends, and companions, an insight into his former mode of life—his habits of thought—his prior state—the peculiarities of his disposition—whether there exists in the case an hereditary predisposition to insanity; and other circumstances likely to elucidate the actual state of the mind at the time when the alleged offence was perpetrated. Great perseverance and ingenuity are often required before the truth can be elicited."

We shall conclude this part of the subject, by Dr. Winslow's advice to his Professional brethren:—

"In criminal cases, should the witness be interrogated as to the alleged lunatic's consciousness of right and wrong, or as to his knowledge that he was violating the law of God and man at the moment when the crime was committed, I would strongly suggest that he should, unless the case be one of obvious lunacy, decline answering the question. The witness may have a clear and positive opinion as to the existence of insanity; but how can he, in every case, solve the question as to the lunatic's ability to distinguish accurately between good and evil, right and wrong, lawful and unlawful? Dr. Haslam says, when alluding to this point, that 'It is not the province of the medical witness to pronounce an opinion as to the prisoner's capability of distinguishing right from wrong. It is the duty of the medical man, when called upon to give evidence in a Court of Law, to state whether he considers insanity to be present in any given case, not to ascertain the quantity of reason which the person imputed to be insane, may or may not possess. If it should be presumed that any medical practitioner is able to penetrate into the recesses of a lunatic's mind at the moment he committed the outrage; to view the internal play of obtruding thoughts and contending motives; and to decide that he knew the good and evil, right and wrong, he was about to commit,—it must be confessed,

that such knowledge is beyond the circuit of our attainment. It is sufficient for the medical practitioner to know that the person's mind is deranged, and that such a state of insanity will be sufficient to account for the irregularity of his actions; and that in a sound mind the same conduct would be deemed criminal. If violence be inflicted by such a person during a paroxysm of rage, there is no acuteness of metaphysical investigation which can trace the succession of thoughts, and the impulses by which he is goaded, for the accomplishment of his purpose."

In the course of the lecture, several remarkable instances of insanity are stated, from which we select the following:—A patient had been subjected to the most cruel treatment by the person who had the care of him, and the murder of the keeper is thus narrated by the lunatic himself:—

"The man (he said) whom I stabbed richly deserved it. He behaved to me with great violence and cruelty; he degraded my nature as a human being; he tied me down, handcuffed me, and confined my hands much higher than my head with a leathern thong; he stretched me on the bed of torture; after some days he released me. I gave him warning, for I told his wife I would have justice of him. On her communicating this to him, he came to me in a furious passion, threw me down, dragged me through the court-yard, thumped me on the breast, and confined me in a dark and damp cell. Not liking this situation, I was induced to play the hypocrite. I pretended extreme sorrow for having threatened him, and by an affectation of repentance, prevailed on him to release me. For several days I paid him great attention, and lent him every assistance. He seemed much pleased with the flattery, and became very friendly in his behaviour towards me. Going one day into the kitchen, where his wife was busied, I saw a knife; this was too great a temptation to be resisted; I concealed it about my person, and carried it with me. For some time afterwards the same friendly intercourse was maintained between us; but as he was one day unlocking his garden-door, I seized the opportunity, and plunged the knife up to the hilt in his back.' He always mentioned this circumstance with peculiar triumph, and his countenance, a most cunning and malignant one, became highly animated at the conclusion of the story."

On the trial of a prisoner in Philadelphia for the murder of his daughter—the following facts were disclosed:—

"Eighteen years previously to the commission of the crime, a confectioner of the name of Wood had come from England; had carried on his trade first in New York, and then in Philadelphia; had realised money, and acquired a respectable character. He had an only daughter, whom he was desirous of advancing into a higher station by marriage. But he him-

self was not in genteel society; yet he restrained her from associating with persons of her own condition; and she therefore had no freedom in any circle. She assisted him in keeping his shop, one of the first of its kind in Philadelphia. A young man of inferior habits and station made love to her, and persuaded her to leave her father's roof and marry him. She was absent only one night, when she returned home, and confessed she was a married woman. Her father became violently and passionately excited; he drank a large quantity of rum; and, under the combined influence of disappointed ambition, rage, and intoxication, he shot his daughter with a pistol. He did not attempt to escape. When he became sober and free from excitement, he had no knowledge of his crime. He was tried for the murder. His counsel pleaded insanity, and proved previous mental aberration; but, in his defence, he mainly relied on the shock given to his feelings by his daughter's conduct having produced a real insanity preceding the homicide. A verdict of lunacy was recorded. If this case had occurred in England, it is questionable whether he would have been acquitted."

We next notice some of the instances in which crime has been committed during partial insanity, or in a state of somnambulism, or whilst imperfectly conscious of the act.

"A lunatic has been known to commit murder in a fit of frenzy, his sudden arrest and committal to prison temporarily restoring the mind to its healthy balance. A man has been guilty of a capital crime; has been seized and sent to prison, and has, from remorse, or a sense of horror at his position, suddenly become insane; his derangement only exhibiting itself after his arrest. Persons have been known to commit the crime of murder whilst in a state of somnambulism, and also during that half-unconscious condition between sleeping and waking. Cases of this description are extremely perplexing to medical jurists. If it can be satisfactorily proved that the person perpetrated the murder whilst in this state—if the fact be unequivocally established—then, I conceive, it ought to be considered as a good exculpating plea. It should never, however, be forgotten, that these cases are easily simulated. Examples of this character are recorded by medical writers. A person has been suddenly roused by a frightful dream, and, whilst under its influence, has been known to take away human life. Suicide has been committed under analogous circumstances. A person, apparently well, has gone to bed without manifesting the slightest tendency to self-destruction; he was awoke suddenly and destroyed himself. A case, illustrative of this fact, is on record. It is as follows:—An old lady residing in London awoke in the middle of the night, went down stairs, and threw herself into a cistern of water, where she was found

drowned.' It was maintained that the suicide was the result of certain mental impressions conjured up in the mind during a dream. Dr. Pagan refers to the following interesting case, to prove that murder may be committed by a person when under the effects of a frightful vision.

"Bernard Schedmaizig suddenly awoke at midnight; at the moment he saw a frightful phantom, or what his imagination represented as such—a fearful spectacle. He twice called out, 'Who is that!' He received no answer. Imagining that the phantom was advancing upon him, and having altogether lost his self-possession, he raised a hatchet which was beside him, and attacked the spectre: it was found that he had murdered his wife!

"A pedler, who was in the habit of walking about the country armed with a sword-stick was awakened one evening, while laying asleep on the high road, by a man suddenly seizing him, and shaking him by the shoulders. The man, who was walking by with some companions, had done this out of a joke. The pedler suddenly woke, drew his sword, and stabbed the man, who soon afterwards died. He was tried for manslaughter. His irresponsibility was strongly urged by his counsel, on the ground that he could not have been conscious of his act in the half-waking state. This was strengthened by the opinions of medical witnesses. He was, however, found guilty. The murder, in this instance, may have been the result of passion. We have no evidence to the contrary."

In conclusion, we may cite the following judicial criteria of insanity, which were propounded on the trial of Bellingham for the murder of Mr. Perceval. Lord Chief Justice Mansfield said,—

"The law is extremely clear. If a man was deprived of all power of reasoning, so as not to be able to distinguish whether it was right or wrong to commit the most wicked or the most innocent transaction, he could not certainly commit an act against the law. Such a man, so destitute of all power of judgment, could have no intention at all. In order to support this defence, however, it ought to be proved by the most distinct and unquestionable evidence that the criminal was incapable of judging between right or wrong. It must in fact be proved, beyond all doubt, that at the time he committed the atrocious act with which he stood charged, he did not consider murder was a crime against the laws of God and nature. There was no other proof of insanity which could excuse murder or any other crime. There were various species of insanity. Some human creatures were void of all power of reasoning from their birth; such could not be guilty of any crime. There was another species of madness, in which persons were subject to temporary paroxysms, in which they were guilty of acts of extravagance; this was called lunacy. If these persons committed a crime



when they were not affected with the malady, they were, to all intents and purposes, amenable to justice. So long as they could distinguish good from evil, so long would they be answerable for their conduct. There was a third species of insanity, in which the patient fancied the existence of injury and sought an opportunity of gratifying revenge by some hostile act. If such a person was capable, in other respects, of distinguishing right from wrong, there was no excuse for any act of atrocity which he might commit under this description of derangement. The witnesses who had been called to support this extraordinary defence had given a very singular account, in order to show that at the time of the commission of the crime the prisoner was insane. What might have been the state of his mind some time ago was perfectly immaterial. The single question was, whether at the time this act was committed, he possessed a sufficient degree of understanding to distinguish good from evil, right from wrong, and whether murder was a crime not only against the laws of God, but the law of his country."

## LAW OF ATTORNEYS.

### RENEWAL OF ANNUAL CERTIFICATE.

I was admitted in 1822, and practised until the year ending in November, 1849, when I discontinued in consequence of ill health. Must I undergo another examination before being permitted to renew my certificate?

F.

[We think no examination will be required. There is no instance of such examination, where the attorney has practised several years, and has ceased only during the last five years.

—Ed.]

### TOWN OR COUNTRY CERTIFICATE DUTY.

By the 53 Geo. 3, c. 184, the certificate duty payable by every solicitor residing within the limits of the twopenny-post in England was 12*l*. By the recent Act of the 16 & 17 Vict. c. 63, the certificate duty payable by a solicitor, if he shall reside within the distance of 10 miles from the General Post-office in the city of London, is to be 9*l*, and if he shall reside elsewhere it is to be 6*l*. My place of business is within 10 miles of London, but more than 10 miles from the General Post-office. To which rate of duty shall I be liable under the present Act.

B.

[It appears clear that the lesser duty of 6*l*. will be sufficient, if the attorney does not practice within the 10 miles for more than 40 days in the year. The usual place of business being beyond 10 miles, we presume the attorney will not be liable to a penalty for occasionally transacting business within the 10 miles.—Ed.]

## SEPARATE ATTESTATIONS OF ARTICLES ON CLERKSHIP.

On assigning the residue of the term of my articles, is it necessary that the same person should witness the execution of the assignment by all parties, or will it be sufficient if one affidavit shows the execution by the first attorney, and a separate affidavit by another person of the execution by the second attorney and the clerk.

T.

[We have no doubt that separate affidavits will be sufficient.—Ed.]

## AGGREGATE MEETING OF SOLICITORS AT LEEDS.

### YORKSHIRE LAW SOCIETY.

At a Meeting of the Committee of Management, held at the Law Library, Minster Gates, York, on Monday, the 18th of September ult., Henry Newton, Esq., the President, in the Chair, it was resolved:—

That a Deputation be appointed to attend the Aggregate Meeting of Solicitors, to be held at Leeds, on the 18th October next, and that such deputation consist of Henry Newton, Esq., the President of this Society, the Right Hon. the Lord Mayor (George Leeman, Esq.), the Vice-President, Mr. Alderman Seymour, Mr. Alderman Richardson, the Undersheriffs of the County and City of York (William Gray, Esq., and E. R. Anderson, Esq.), James Richardson, Esq., and Thomas Hodgson, Esq., the Secretary of this Society.

## SELECTIONS FROM CORRESPONDENCE.

### LAWYERS' HALF-HOLIDAY.

SIR,—A short time since you told your readers, that 300 of the most eminent solicitors in London, had memorialised the Incorporated Law Society to take steps, to secure to them and their clerks, the advantages accruing from the Saturday half-holiday movement; and that this Society in compliance with their request, had applied to the Lord Chancellor, that his order might be obtained, to close the Law Offices at two o'clock on that day. Unfortunately the application was not made till the commencement of Vacation: another term must commence before the required order can be made.

Under these circumstances, your readers will hear with pleasure, that some solicitors, relying on the favourable opinion expressed by the Judges, and taking advantage of the leisure of the Vacation, have anticipated the order and commenced giving the half-holiday.

S.

**COSTS OF TAXATION.**

SIR,—There is a grievance which, as it appears to me, might be redressed with great advantage to the Profession. A short time since I obtained the common order for the delivery and taxation of a solicitor's bill and delivery up of papers. The bill was not delivered within the time limited, and I moved for a four day order, which was granted, and then the bill was delivered. On taxing the petitioner's costs of taxation, the Master disallowed the costs of the motion for the four day order, and, I believe, according to the practice, he was right, for I recollect a case before Lord Eldon, 30 years ago, in which an order was made upon a solicitor for payment of a sum of money. He refused to pay. A second order was made to pay in a certain time. He refused. A third order was made to pay in a certain time or stand committed. He refused. A fourth order was made for his committal, but before it could be drawn up he tendered the money without costs, and upon an application being made to Lord Eldon on the subject, contended that he was right, according to the practice of the Court. I remember Lord Eldon saying, that if that was the practice of the Court it was high time it was altered, but I believe it never has been altered. In my case, the trifling sum certified to be due to the solicitor was immediately paid, but not a paper will he give up, and unless the Master of the Rolls can be induced to make a special order for the costs of proceeding to get him into contempt for this new disobedience of the order, he will also escape them.

**COMPULSORY REFERENCE.—OFFICIAL ARBITRATORS.**

There is another subject to which I beg to draw your attention. We have now compulsory arbitrations, ought we not therefore to have public arbitrators paid by the State or out of the Fee Fund—men of standing and respectability? So far as I know anything of the general body of attorneys, they have a horror of references to barristers, and the enormous charges of all descriptions of arbitrators are too notorious to need more than mention.

J. C.

**COMMON LAW PROCEDURE ACT.**

In an ordinary running down case, will it be open to the plaintiff to bring an action for a mandamus, under the new Common Law Procedure Act, to obtain a specific reparation of the injury done to the defendant's barge, ship, &c., instead of an action for damages in the usual way?

W.

**LIST OF PUBLIC GENERAL ACTS.**

17 & 18 VICT.

CAP. 1. An act to explain and amend an Act of the last Session relating to the Duties

of Assessed Taxes; and to authorise Justices of the Peace in Ireland to administer Oaths required in Matters relating to Income Tax.

2. An act to supply the Sum of 8,000,000*l.* out of the Consolidated Fund to the Service of the year 1854.

3. An act for raising the Sum of 1,750,000*l.* by Exchequer Bills, for the Service of the year 1854.

4. An act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters.

5. An act to admit Foreign Ships to the Coasting Trade.

6. An act for the Regulation of her Majesty's Royal Marine Forces while on shore.

7. An act for extending the Time limited for putting into execution the Act of the 14th & 15th years of her present Majesty, for the better Management and Control of Highways in South Wales.

8. An act further to amend an Act relating to the Valuation of rateable Property in Ireland.

9. An act to authorise the Inclosure of certain Lands in pursuance of a Report of the Inclosure Commissioners for England and Wales.

10. An act for granting to her Majesty additional Duties on Profits arising from Property, Professions, Trades, and Offices.

11. An act to amend the Laws relating to Ministers' Money, and the Church Temporalities (Ireland) Act.

12. An act for raising the Sum of 16,024,100*l.* by Exchequer Bills, for the Service of the year 1854.

13. An act to amend the Acts relating to the Malitia of the United Kingdom.

14. An act to continue her Majesty's Commission for building new Churches.

15. An act to empower the Commissioners of the Admiralty to construct a Tunnel between her Majesty's Dockyard at Devonport and her Majesty's Steam Factory Yard at Keyham, and to acquire certain Property for her Majesty's service.

16. An act to amend the Act of the 13th & 14th Victoria, chapter 61, and the Act of the 15th & 16th Victoria, chapter 54.

17. An act to make further Provision for defining the Boundaries of Counties, Baronies, Half Baronies, Parishes, Town Lands, and other Divisions and Denominations of Land in Ireland for Public purposes.

18. An act for the Encouragement of Seamen and the more effectual Manning of her Majesty's Navy during the present War.

19. An act for facilitating the Payment of her Majesty's Navy, and the Payment and Distribution of Prize, Bounty, Salvage, and other Monies to and amongst the Officers and Crews of her Majesty's Ships and Vessels of War; and for the better Regulation of the Accounts relating thereto.

20. An act to repeal an Act of the 53rd year of King George the Third, chapter 72, and an Act of the 8th year of her present Majesty,

chapter 21; and for making Provision for the Appointment and for Remuneration of a Stipendiary Justice for the Division of Manchester in the County of Lancaster, and of Clerks to such Justices and the Justices for the Borough of Salford; and for other purposes.

21. An act to apply the Sum of 8,000,000*l.* out of the Consolidated Fund to the Service of the year 1854.

22. An act to enable the Collector General of Dublin to levy Money to repay a certain Outlay by the Corporation for preserving and improving the Port of Dublin in and about repairing the Quay Wall of the River Liffey, and for future Repairs thereof, and for repairing and rebuilding Bridges over the said River.

23. An act for raising the Sum of 6,000,000*l.* by Exchequer Bonds and Exchequer Bills.

24. An Act for granting to her Majesty an increased Rate of Duty on Profits arising from Property, Professions, Trades and Offices.

25. An act to amend the Industrial and Provident Societies' Act, 1852.

26. An act to assimilate the Law and Practice existing in Cases of High Treason in Ireland to the Law and Practice existing in Cases of High Treason in England.

27. An act for granting certain additional Rates and Duties of Excise.

28. An act to alter and amend certain Duties of Customs.

29. An act to alter the Duties of Customs on Sugar, Molasses, and Spirits.

30. An act for granting certain Duties of Excise on Sugar made in the United Kingdom.

31. An act for the better Regulation of the Traffic on Railways and Canals.

32. An act to facilitate the Apportionment of the Rent when Parts of Lands in Lease are taken for the Purposes of the Church Building Acts.

33. An act to place Public Statues within the Metropolitan Police District under the Control of the Commissioners of her Majesty's Works and Public Buildings.

34. An act to enable the Courts of Law in England, Ireland, and Scotland to issue Process to compel the Attendance of Witnesses out of their Jurisdiction, and to give effect to the Service of such Process in any Part of the United Kingdom.

35. An act to repeal certain Provisions of an Act of the 5th and 6th years of her present Majesty, concerning the holding of Assizes for the County of Warwick.

36. An act for Preventing Frauds upon Creditors by secret Bills of Sale of Personal Chattels.

37. An act for establishing the Validity of certain Proceedings in her Majesty's Court of Vice-Admiralty in Mauritius.

38. An act for the Suppression of Gaming Houses.

39. An act to indemnify such Persons in the United Kingdom as have omitted to qualify themselves for Offices and Employments, and to extend the Time limited for those purposes respectively.

40. An act to continue an Act of the last Session of Parliament, for extending for a limited time the Provision for Abatement of Income Tax in respect of Insurance on Lives.

41. An act to continue the Poor Law Board.

42. An act to continue certain Acts for regulating Turnpike Roads in Ireland.

43. An act to continue an Act of the 17th year of her present Majesty, for charging the Maintenance of certain poor Persons in Unions in England and Wales upon the Common Fund.

44. An act for regulating and maintaining the Harbours of Holyhead, and for vesting them in the Admiralty.

45. An act to amend the Dublin Carriage Act, 1853.

46. An act to continue certain Acts relating to Linen, Hempen, and other Manufactures in Ireland.

47. An act to alter and improve the Mode of taking Evidence in the Ecclesiastical Courts of England and Wales.

48. An act to authorise the Inclosure of certain Lands, in pursuance of a Special Report of the Inclosure Commissioners for England and Wales.

49. An act for the Settlement of Claims upon and over the New Forest.

50. An act to continue an Act of the 12th year of her present Majesty, for amending the Laws relating to Savings Banks in Ireland; and to authorise Friendly Societies to invest the whole of their Funds in Savings Banks.

51. An act to confirm certain Provisional Orders made under an Act of the 15th year of her present Majesty, to facilitate Arrangements for the Relief of Turnpike Trusts, and to make certain Provisions respecting Exemptions from Tolls.

52. An act to continue an Act for authorising the Application of Highway Rates to Turnpike Roads.

53. An act to confirm Provisional Orders of the General Board of Health for the Districts of Plymouth, Haworth, Aberdare, Bishop Auckland, Willenhall, and Over Darwen.

54. An act to guarantee the Liquidation of a Loan or Loans for the Service of the Colony of Jamaica.

55. An act for the Registration of Bills of Sale in Ireland.

56. An act to make further Provisions in relation to certain Friendly Societies.

57. An act to amend the Law relating to the Appointment of Returning Officers in certain Cases.

58. An act to continue certain Turnpike Acts in Great Britain, and to make further Provisions concerning Turnpike Roads in England.

59. An act to allow Verdicts on Trials by Jury in Civil Causes in Scotland to be returned although the Jury may not be unanimous.

60. An act to amend an Act of the 12th and 13th years of her present Majesty for

the more effectual Prevention of Cruelty to Animals.

61. An Act to authorise the Application of a Sum of Money out of the forfeited and unclaimed Army Prize Fund in enlarging and improving the Royal Military Asylum.

62. An act to extend the benefits of two Acts of her Majesty relating to the Constitution, Transmission, and Extinction of Heritable Securities in Scotland.

63. An act to continue the Poor Law Commission for Ireland.

64. An act to amend an Act of the last Session, for extending the Public Libraries Act, 1850, to Ireland and Scotland.

65. An act for further continuing certain temporary Provisions concerning Ecclesiastical Jurisdiction in England.

66. An act to continue the Exemption of Inhabitants from Liability to be rated as such in respect of Stock in Trade or other Property to the Relief of the Poor.

67. An act to facilitate the Purchase of Common, Commonable, and other Rights, by the Principal Officers of her Majesty's Ordinance.

68. An act to provide for the Application of certain Stock purchased with Moneys which arose from the Sale of Part of the Land Revenues of the Crown in Ireland.

69. An act to indemnify Local Boards of Health as regards rating for the Repair of Highways under the Public Health Act, 1848.

70. An act to enable the Trustees of Portland Chapel, Oxford Chapel, and Welbeck Chapel, in the parish of Saint Marylebone, to augment the Salaries of the Ministers of the said Chapels.

71. An act to amend the Law concerning the making of Borough Rates in Boroughs not within the Municipal Corporation Acts.

72. An act to provide for Payment of the Salaries of the Sheriff and Sheriff Clerk of Chancery in Scotland.

73. An act to amend the Acts for the Regulation of Joint Stock Banks in Scotland.

74. An act to render Reformatory and Industrial Schools in Scotland more available for the Benefit of Vagrant Children.

75. An Act to remove Doubts concerning the due Acknowledgment of Deeds by Married Women in certain Cases.

76. An act for the Formation, Regulation, and Government of Convict Prisons in Ireland.

77. An act to provide for the Mode of passing Letters Patent and other Acts of the Crown relating to India, and for vesting certain Powers in the Governor General of India in Council.

78. An Act to appoint Persons to administer Oaths, and to substitute Stamps in lieu of Fees, and for other purposes, in the High Court of Admiralty of England.

79. An act for further regulating the Sale of Beer and other Liquors on the Lord's Day.

80. An act to provide for the better Registration of Births, Deaths, and Marriages in Scotland.

81. An act to make further Provision for the good Government and Extension of the University of Oxford, of the Colleges therein, and of the College of Saint Mary, Winchester.

82. An act further to improve the Administration of Justice in the Court of Chancery of the County Palatine of Lancaster.

83. An act to amend the Laws relating to the Stamp Duties.

84. An act to extend the Provisions of the Acts for the Augmentation of Benefices.

85. An act for better securing the collecting and accounting for the Land Tax, Assessed Taxes, and Income Tax, by the Collectors thereof.

86. An act for the better Care and Reformation of Youthful Offenders in Great Britain.

87. An act to make further Provision for the Burial of the Dead in England beyond the Limits of the Metropolis.

88. An act to render valid certain Marriages of British Subjects in Mexico.

89. An act to amend the Laws for the better Prevention of the Sale of Spirits by unlicensed Persons, and for the Suppression of Illicit Distillation, in Ireland.

90. An act to repeal the Laws relating to Usury and to the Enrolment of Annuities.

91. An act for the Valuation of Lands and Heritages in Scotland.

92. An act to continue an Act of the 11th year of her present Majesty, for the better Prevention of Crime and Outrage in certain Parts of Ireland.

93. An act for the Exchange of the Office in Somerset House of the Duchy of Cornwall for an office to be erected in Pimlico on the Hereditary Possessions of the Crown.

94. An act to alter the Mode of providing for certain Expenses now charged upon certain Branches of the Public Revenues and upon the Consolidated Fund.

95. An act to make better Provision for the Administration of the Laws relating to the Public Health.

96. An act for allowing Gold Wares to be manufactured at a lower Standard than that now allowed by Law, and to amend the Law relating to the assaying of Gold and Silver Wares.

97. An act to amend and extend the Acts for the Inclosure, Exchange, and Improvement of Land.

98. An act to regulate the Salaries of the Parochial Schoolmasters of Scotland.

99. An act to provide for the Establishment of a National Gallery of Paintings, Sculpture, and the Fine Arts, for the Care of a Public Library, and the Erection of a Public Museum, in Dublin.

100. An Act to make further provision for the more speedy and efficient Despatch of Business in the High Court of Chancery.

101. An act to continue and amend the Acts now in force relating to Friendly Societies.

102. An Act to consolidate and amend the Laws relating to Bribery, Treating, and undue

Influence at Elections of Members of Parliament.

103. An act to make better Provision for the paving, lighting, draining, cleansing, supplying with Water, and Regulation of Towns in Ireland.

104. An act to amend and consolidate the Acts relating to Merchant Shipping.

105. An act to amend the Laws relating to the Militia in England and Wales.

106. An act for amending the Laws relating to the Militia, and raising a Volunteer Force, in Scotland.

107. An act to amend the Laws relating to the Militia, and for raising a Volunteer Militia Force, in Ireland.

108. An act to suspend the making of Lists and the Ballots for the Militia of the United Kingdom.

109. An act to defray the Charge of the Pay, Clothing, and contingent and other Expenses of the Disembodied Militia in Great Britain and Ireland; to grant Allowances in certain Cases to Subaltern Officers, Adjutants, Paymasters, Quartermasters, Surgeons, Assistant Surgeons, Surgeons' Mates, and Serjeant-Majors of the Militia; and to authorise the Employment of the Non-commissioned Officers.

110. An act to provide for the repayment of Moneys advanced from the Exchequer to the county of Mayo for Public purposes.

111. An act to continue and amend the Metropolitan Sewers' Acts.

112. An act to afford greater Facilities for the Establishment of Institutions for the Promotion of Literature and Science and the Fine Arts, and to provide for their better Regulation.

113. An Act to amend the Law relating to the Administration of the Estates of deceased Persons.

114. An act to extend the Rights enjoyed by the Graduates of the Universities of Oxford and Cambridge in respect to the Practice of Physic to the Graduates of the University of London.

115. An act to amend the Law relative to the Removal of Prisoners in Custody.

116. An act to continue and amend an Act to facilitate the Management and Improvement of Episcopal and Capitular Estates in England.

117. An act to facilitate the Sale and Transfer of Incumbered Estates in the West Indies.

118. An act to empower the Legislature of Canada to alter the Constitution of the Legislative Council for that Province, and for other purposes.

119. An Act for regulating Appointments to Offices in the Court of Bankruptcy, and for amending the Laws relating to Bankrupts.

120. An act to repeal certain Acts and Parts of Acts relating to Merchant Shipping, and to continue certain Provisions in the said Acts.

121. An act to apply a sum out of the Consolidated Fund and certain other Sums to the Service of the year 1854, and to appropriate the Supplies granted in this Session of Parliament.

122. An act for the further Alteration and

Amendment of the Laws and Duties of Customs.

123. An act to render any Dealing with Securities issued during the present War between Russia and England by the Russian Government a misdemeanor.

124. An act to settle the Contribution to be made by certain Baronies in Roscommon and Galway and the County of the Town of Galway to the Midland Great Western Railway of Ireland Company.

125. An act for the further Amendment of the Process, Practice, and Mode of Pleading in and enlarging the Jurisdiction of the Superior Courts of Common Law at Westminster, and of the Superior Courts of Common Law of the Counties Palatine of Lancaster and Durham.

## LIST OF LOCAL AND PERSONAL ACTS.

*Declared Public, and to be Judicially Noticed.*

17 & 18 VICT. 1854.

1. An act for better supplying with Gas the town of Middleton and the neighbourhood thereof in the County Palatine of Lancaster.

2. An act to enable the London Life Association to increase the amount authorised by their Deed of Settlement to be assured upon a single Life in the said Society.

3. An act for granting further powers to "The Radcliffe and Pilkington Gas Company."

4. An act to enable the Leeds New Gas Company to raise a further Sum of Money; to consolidate and amend the Acts relating to the Company; and for other purposes.

5. An act for enabling the Brighton, Hove, and Preston Constant Service Waterworks Company to purchase the undertaking of the Brighton, Hove, and Preston Waterworks Company; and for granting to the first-named Company all necessary powers for supplying with water the parishes of Brighton, Hove, and Preston in the County of Sussex.

6. An act for incorporating and extending the powers of the Hastings and Saint Leonards Gas Company.

7. An act for enabling the Norwich Equitable Fire Assurance Company to sue and be sued in that name, and for other purposes.

8. An act for the Improvement of the borough of Warrington; and for enabling the Council thereof to erect a covered Market; and for other purposes.

9. An act to warp and improve certain Lands in the Level of Hatfield Chase.

10. An act for enabling the Nottingham Waterworks Company to raise a further Sum of Money; and for amending some of the Provisions of the Act relating to such Company.

11. An act to consolidate the Stock and Powers of the Corporation of "The Royal Exchange Assurance of Houses and Goods from Fire," with the Stock and Powers of the Cor-

poration of "The Royal Exchange Assurance," and to confer on the last-named Corporation the Powers of "The Royal Exchange Assurance Annuity Company" and "The Royal Exchange Assurance Loan Company," and to give additional powers to "The Royal Exchange Assurance."

12. An act to confer additional powers upon the Corporation of the Amicable Society for a perpetual Assurance Office, for the purposes of Investment.

13. An act to enable the Dock Company at Kingston-upon-Hull to raise a further Sum of Money, and to convert the Mortgage and Bond Debt of the Company into Debenture Stock and Perpetual Annuities; and for other purposes.

14. An act for establishing a Police Superannuation Fund in the Borough of Liverpool.

15. An act to make further Provision for the Sewerage, Sanitary Regulation, and Improvement of the Borough of Liverpool.

16. An act for better supplying with Water the town of Southport in the County Palatine of Lancaster, and the Neighbourhood thereof.

17. An act for supplying with Gas Ramsbottom and other places in the Parish of Bury in the County Palatine of Lancaster.

18. An act to enable Rosendale Waterworks Company to raise a further Sum of Money.

19. An act for enabling the Scarborough Public Market Company to raise a further Sum of Money, and for amending and consolidating the Provisions of the Act relating to such Company.

20. An act for Lighting with Gas the borough of Bolton and places near thereto, and for other purposes, and of which the short title is "The Bolton Gas Company's Act, 1854."

21. An act for continuing the Term and amending and extending the Provisions of the Act relating to the Kingwood District of Turnpike Roads in the County of Gloucester.

22. An act for repealing "The Stafford Gas Act, 1846;" and for reconstituting the Stafford Gas Company, with additional Powers; and for other purposes.

[To be continued.]

## NOTES OF THE WEEK.

### ELECTION AUDITORS.

*Appointed under the Bribery Act, 17 & 18 Vict. c. 102.*

*Derby, Mr. James Wallack.*

*Wigan, Mr. W. A. Barrow.*

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lords Justices.

*Norton v. Cooper.* July 25, 1854.

**REDEMPTION SUIT AGAINST MORTGAGEES IN POSSESSION OF MINES.—INTEREST ON ADVANCES.—COSTS.**

*The mortgagees in possession of certain iron mines had expended moneys for working the mines, and had also paid interest to the prior incumbrancers: Held, on appeal from Vice-Chancellor Stuart, that they were entitled to interest on such payments, and also to their costs of a redemption suit where their conduct was not shown to be vexatious.*

THIS suit was instituted for the redemption of certain iron mines in the possession of the mortgagees, and for an account. It appeared that the mortgagees had expended moneys in the purchase of limestone, &c., for smelting the ore, and had also paid interest to the prior incumbrancers. The Master on a reference had allowed these payments, and the Vice-Chancellor Stuart had overruled exceptions to his finding, but disallowing interest on such payments, and also the costs of suit, whereupon this appeal was presented.

*Malins and Kinglake* for the plaintiffs; *Wigram and Hardy* for the defendants.

The Lords Justices said, that the defendants were entitled to interest on their payments for carrying on the works and for interest on the prior incumbrances, and as there had been no

vexatious conduct on their part they could not be called on to pay the costs of the redemption suit, and the order would be varied accordingly.

### Master of the Rolls.

*Atherton v. Crowder.* July 17, 1854.

**WILL.—CONSTRUCTION.—GIFT TO PERSONAL REPRESENTATIVES.—DESCENDANTS.**

*A testator by his will gave a life interest in all his real and personal estate to his wife, and after her death to be divided among such of her children as should be living at her death, and he directed that in case any of such children should die in her lifetime, the personal representatives of the child or children so dying should take per stirpes and not per capita: Held, on the death of a child in the widow's lifetime, without leaving issue, that the descendants and not the executors and administrators were entitled.*

In this case it appeared that the testator by his will gave a life estate in all his real and personal estate to his wife for life, and after her death to be divided among such of her children who should be living only at her death, and he directed that in case any of such children should die in her lifetime the personal representatives of the child or children so dying should take *per stirpes* and not *per capita*.

One of the children died in the widow's lifetime without issue.

*Scott* for the administratrix of the daughter; *Lloyd, Palmer, Fleming, and Smyth* for other parties.

The Master of the Rolls said, that the meaning of the words *personal representatives* must be descendants, and not executors and administrators, as the words *per stirpes* and not *per capita* were added, and this was confirmed by the subsequent part of the will.

Vice-Chancellor Kindersley.

*Thomson v. Judge.* June 27, 1854.

EQUITY JURISDICTION IMPROVEMENT ACT.  
—SUPPLEMENTAL STATEMENT.—NEW  
ISSUE.

*A bill charged that the defendant had obtained a bequest by undue influence, and after evidence was taken and publication passed, the plaintiff moved for leave to amend or to file a supplemental statement under the 15 & 16 Vict. c. 86, s. 53, that the testator had executed the will in ignorance of its contents: Held, that this was a different issue to that raised by the bill, and the motion was refused, with costs.*

THIS was a motion for leave to amend this bill or to file a supplemental statement under the 15 & 16 Vict. c. 86, s. 53,<sup>1</sup> in this administration suit. The bill charged that the defendant had obtained a bequest by undue influence, and evidence had been taken and publication passed.

*Bazalgette* in support, on the ground that the evidence showed the testator had executed the will in ignorance of its contents.

*Glasse and Shee*, contra.

The Vice-Chancellor said, the issue raised by the will was that the defendant had obtained the bequest by undue influence. The amendment sought, on the other hand, would raise the issue that the defendant had fraudulently inserted the bequests without the testator's knowledge, and the motion must be refused, with costs.

<sup>1</sup> Which enacts, that "it shall not be necessary to exhibit any supplemental bill in the said Court for the purpose of stating or putting in issue facts or circumstances which may have occurred after the institution of any suit; but such facts or circumstances may be introduced by way of amendment into the original bill of complaint in the suit, if the cause is otherwise in such a state as to allow of an amendment being made in the bill, and if not, the plaintiff shall be at liberty to state such facts or circumstances on the record, in such manner and subject to such rules and regulations with respect to the proof thereof and the affording the defendant leave and opportunity of answering and meeting the same, as shall in that behalf be prescribed by any General Order of the Lord Chancellor."

Vice-Chancellor Wood.

*McCulloch v. Gregory.* June 26, 1854.

PURCHASE UNDER DECREE.—DISCHARGE  
FROM.—PRACTICE.

*A motion on behalf of a purchaser under a decree to be discharged from his purchase, was directed to stand over until the Master's report had been confirmed.*

THIS was a motion on behalf of the purchaser under a decree of the Court to be discharged from his purchase.

*Bird* in support; *W. M. James*, contra.

The Vice-Chancellor said, that the motion must stand over until the Master's report of the purchase was confirmed, but without prejudice to this motion.

*Ell v. Burial Board of Islington.* June 29, 1854.

INJUNCTION BILL.—COSTS OF WRITTEN  
COPY FILED.

*A written bill had been filed in an injunction case under the 15 & 16 Vict. c. 86, s. 6: Held, that the plaintiff was entitled to the costs where it was not shown they had been incurred mala fide.*

THIS was an application for a direction to the Taxing Master to allow the costs of a written bill which had been filed in this injunction case under the 15 & 16 Vict. c. 86, s. 6.<sup>2</sup>

*Rolt*, in support, cited the 2nd Order of August 7, 1852, which directs, that "no costs are to be allowed, either as between party and party, or as between solicitor and client, for any written bill or written copy of a bill, filed under the 15 & 16 Vict. c. 86, s. 6,<sup>3</sup> or for any written copy thereof, served upon any defendant thereto, or for any written brief of such bill, unless the Court shall, in disposing of the cause, direct the allowance thereof."

*W. M. James*, contra.

The Vice-Chancellor said, that as it was not shown the costs had been incurred *mala fide*, the costs must be allowed.

<sup>2</sup> Which enacts that "notwithstanding the provisions hereinbefore contained, the Clerks of Records and Writs of the said Court may receive and file a written copy of any bill of complaint praying a writ of injunction or a writ of *ne exeat regno*, or filed for the purpose, either solely or among other things of making an infant a ward of the said Court, upon the personal undertaking of the plaintiff or his solicitor to file a printed copy of such bill within 14 days, and every bill of complaint so filed shall be deemed and taken to have been filed at the time of filing the written copy thereof, and a written copy of any such bill of complaint stamped as aforesaid, and with such endorsement thereon as aforesaid, may be served on any defendant thereto, and such service shall have the same effect as the service of a printed copy.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

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SATURDAY, OCTOBER 14, 1854.
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### MEMOIR OF THE LATE LORD DENMAN.

LORD DENMAN was the son of Dr. Denman, an eminent physician in London. His mother was an aunt of Sir Benjamin Brodie. He was born on the 23rd July, 1779. One of his sisters married Sir Richard Croft, and the other Dr. Baillie, the two leading physicians of their time. Thomas Denman went to Palgrave School, near Diss, in the county of Norfolk, then superintended by the celebrated Mrs. Barbauld, and her distinguished scholar often mentioned, that "he had received from that accomplished lady the rudiments of instruction and the first lessons of discipline." From thence he proceeded to Eton, at which eminent school he remained several years, until he entered St. John's College, Cambridge, where he graduated in 1800.

In 1806, he was called to the Bar by the Honourable Society of Lincoln's Inn, practised at the Common Law Bar, and selected the Midland Circuit for his career at the Assizes. Before his call to the Bar he married the daughter of the Rev. Richard Vevera. Whilst at the Junior Bar, he was much esteemed as an arbitrator and we recollect several important references before him.<sup>1</sup>

<sup>1</sup> One of them was of an extraordinary character. The premises of a trader of the City of London had been burned down, and it was suspected that the fire was not accidental, and that the value of the property was enormously overrated. The man was tried for arson, the punishment for which was then certain death. He was acquitted, became bankrupt, and his assignees brought an action against the insurance company. On the trial coming on, Lord Chief Justice Gibbs advised a reference, and Mr. Denman was chosen arbitrator. After

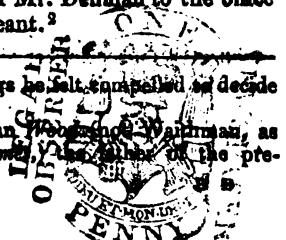
Mr. Denman espoused the principles of the great Whig party, and entered Parliament for the borough of Wareham, at the general election of 1818. In the following year he was elected for Nottingham, for which place he continued to sit, to the great satisfaction of his constituents, until he became Chief Justice. In Parliament he warmly supported several reforms in the Law, as well for the removal of abuses in the administration of justice in the Civil Courts, as in the mitigation of the severities of the Criminal Law. He was also eminently distinguished in the great contest for the abolition of Slavery.

In the year 1820, the trial of Queen Caroline called forth all his impressive and dignified eloquence. Mr. Brougham was appointed her Majesty's Attorney-General and Mr. Denman her Solicitor-General. The distinguished ability shown by Mr. Denman in that celebrated trial, raised him highly in the estimation of the public for his moral courage and unbending firmness. The judgment, as well as zeal which marked his advocacy, must have essentially contributed to the issue of that great question. But, as might be expected, this opposition to the feelings of the King and his powerful ministry, placed a barrier against Mr. Denman's participating in the honours of his profession, to which his talents and standing at the Bar entitled him.

In the year 1822, however, the City of London, many of whose leading members had taken an active part in support of the Queen, appointed Mr. Denman to the office of Common Serjeant.<sup>2</sup>

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numerous meetings he felt compelled to decide against the claim.

² Mr. Alderman Woodcock Warham, as stated in *The Times*, the father of the pre-



sums of money, stock, or other valuable matter or thing capable of being ascertained and set forth, or any other facts, upon the full or proper statement of any of which matters and things in such deed or instrument the stamp duty which shall be or which ought to be payable thereon shall in any measure depend, is or are truly and fully set forth therein; and the Commissioners and their officers may in any case refuse to impress on any such deed or instrument, or any duplicate or counterpart respectively, the particular stamp to denote the payment of the full and proper duty, except on payment of the full stamp duty which would be chargeable on such deed or instrument if all or any of such matters and things had been truly set forth therein; s. 17.

Provided, that no such affidavit shall be used against any person making the same in any proceeding whatever, except only in any inquiry as to the stamp duty with which such deed or instrument is chargeable, and every such person shall, upon payment of such full stamp duty, be relieved from any penalty, forfeiture, or disability he may have incurred by reason of the omission to state truly in such deed or instrument any of the facts, matters, and things aforesaid; s. 18.

As to the statement of the full consideration in deeds, the following are the further enactments:—

By the 48 Geo. 3, c. 149, certain penalties and disabilities were imposed upon the parties to any deed or instrument of conveyance of property upon sale, wherein the full consideration-money directly or indirectly paid or secured should not be truly expressed, and also upon the attorney, solicitor, writer to the signet, or other person employed in or about the preparing of any such deed or instrument: and the sale of a trade or business, or the goodwill thereof, has been erroneously considered by some persons not to be a sale of property within the meaning of the Acts imposing *ad valorem* stamp duties on the conveyance thereof, and the instruments whereby property of that description, or whereby certain messuages, lands, or other property wherein or whereupon such trade or business has been carried on, has or have been in such cases assigned or otherwise conveyed to a purchaser may not have been stamped with the full and proper duties: it is therefore enacted, that in any such case the parties to any such instrument made and bearing date on or before the 15th day of June, 1854, and every person employed in or about the preparing of the same, shall be and they

are hereby declared to be respectively freed, discharged, and indemnified from and against any penalties, forfeitures, and disabilities, contained in or imposed by the said last-mentioned Act which may have been incurred by reason of any omission to express or set forth in any such instrument the full and true purchase or consideration-money upon the sale of the property thereby conveyed, transferred, assigned, or assured, or vested in the purchaser; and all such instruments shall be available in evidence notwithstanding the full and proper *ad valorem* duties which ought to have been paid in respect of the purchase or consideration-money therein expressed for the conveyance, transfer, or assignment of any such trade, business, or goodwill shall not have been paid and denoted thereon; s. 19.

The 22nd section exempts maps, plans, surveys, &c., and enacts that

The 55 Geo. 3, c. 184, and the 13 & 14 Vict. c. 97, shall not extend to any public map, plan, survey, apportionment, allotment, award, or other parochial or public document or writing whatsoever made under or in pursuance of any Act of Parliament, and deposited or kept for reference in any registry, or in any public office, or with the public books, papers, or writings of any parish, by reason of any such documents or writing being referred to in or by any deed or instrument whatever, provided that such document or writing be not endorsed on or annexed to such deed or instrument.

2. LEASES.

By the 13 & 14 Vict. c. 97, certain *ad valorem* stamp duties were granted and imposed upon leases or tacks of any lands, tenements, hereditaments, or heritable subjects at a yearly rent, and doubts were entertained whether such duties extended to any lease or tack for any term or period less than a year: for the removal of such doubts, it is enacted, that where any lease or tack of any lands, tenements, hereditaments, or heritable subjects shall be made for any term or period less than a year at a rent reserved or payable for the same, such lease or tack shall be chargeable with the same *ad valorem* duty as a lease or tack at a yearly rent of the same amount as the sum so reserved or payable; s. 23.

The following is the Schedule to this part of the Act:—

Lease or Tack of any lands, tenements, hereditaments, or heritable subjects, for any term of years exceeding 35, at a yearly rent, with or without any sum of money by way of fine, premium, or grassum paid for the same, the following duties in respect of such yearly rent,

Duties.	100 Years. and under.		Above 100 Years.	
	£	s. d.	£	s. d.
Where the yearly rent shall not exceed £5	0	3 0	0	6 0
And where the same shall exceed £5 and not exceed £10	0	6 0	0	12 0
— — — — — 10 — — — — — 15	0	9 0	0	18 0

Duties.				100 Years and under.	Above 100 Years.
				£ s. d.	£ s. d.
And where the same shall exceed £15 and not exceed £20				0 12 0	1 4 0
— — — — — 20 — — — — — 25				0 15 0	1 10 0
— — — — — 25 — — — — — 50				1 10 0	3 0 0
— — — — — 50 — — — — — 75				2 5 0	4 10 0
— — — — — 75 — — — — — 100				3 0 0	6 0 0
And where the same shall exceed £100 then for every £50, and also for any fractional part of £50				1 10 0	3 0 0

And where any such lease or tack as aforesaid shall be granted in consideration of a fine premium, or grassum, and also of a yearly rent, such lease or tack shall be chargeable also, in respect of such fine, premium, or grassum, with the *ad valorem* stamp duties granted under the head or title of "Conveyance" in the schedule annexed to this Act passed in the 13 & 14 Vict. c. 97.

Exemption.—Any lease made in pursuance of the Trinity College, Dublin, Leasing and Perpetuity Act, 1851.

Conveyance of any kind or description whatsoever in England or Ireland, and charter, disposition, or contract, containing the first original constitution of feu and ground annual rights in Scotland (not being a lease or tack for years); in consideration of an annual sum payable in perpetuity or for any indefinite period, whether feu farm or other rent, feu duty, ground annual, or otherwise. The same duties as on a lease or tack for a term exceeding 100 years, at a yearly rent equal to such annual sum.

Exemptions.—Any lease or tack for a life or lives not exceeding three, or for a term of years determinable with a life or lives not exceeding three, by whomsoever granted.

Any grant in fee simple or in perpetuity, made in Ireland, in pursuance of the Renewable Leasehold Conversion Act, or in pursuance of the Trinity College (Dublin) Leasing and Perpetuity Act, 1851.

All which said leases or tacks and grants respectively shall be chargeable with the stamp duties to which the same were subject and liable before the passing of the Act 16 & 17 Vict. c. 63.

Duplicate or Counterpart and Progressive Duty.

Every such lease or tack, and every such conveyance, charter, disposition, or contract as aforesaid hereby charged with duty, and the duplicate or counterpart thereof respectively, shall be chargeable with the respective stamp duties granted and made payable under the several heads or titles of "Duplicate or Counterpart," and "Progressive Duty," in the schedule annexed to the Act of the 13 & 14 Vict. c. 97.

Licence to demise copyhold lands, tenements, or hereditaments, or the memorandum thereof if granted out of Court, and the copy of Court Roll of any such licence if granted in Court:

Where the clear yearly value of the estate to be demised shall be expressed in such licence and shall not exceed 75*l.*—The same duty as on a lease at a yearly rent equal to such yearly value, under the Act of the 13 & 14 Vict. c. 97.

And in all other cases,—10*s.*

3. EVIDENCE IN CRIMINAL CASES.

By the 27th section, instruments liable to stamp duty are rendered admissible in evidence in any criminal proceeding, though not properly stamped.

4. RECEIPT STAMPS.

Adhesive stamps, denoting the duty of one penny, may, by the 10th section, be used for receipts or drafts or orders payable to the bearer or to order on demand, without regard to their special appropriation.

The 13th section repeals the former exemption from receipt stamps of letters by the General Post acknowledging the safe arrival of bills or notes or other securities.

But receipts for money paid to the Crown is, by section 14, exempted from stamp duty.

5. ORDERS OR DRAFTS.

No draft or order shall, unless the same be duly stamped as a draft or order, be remitted or sent to any place beyond the distance of 15 miles in a direct line from the bank or place at which the same is made payable or be received in payment, or as a security, or be otherwise negotiated or circulated at any place beyond that distance; and if any person shall remit or send any draft or order not duly stamped to any place beyond that distance, or shall receive the same in payment or as a security, or in any manner negotiate or circulate the same at any such last-mentioned place, he shall forfeit the sum of 50*l.*; s. 7.

Provided, that any person who shall receive any such draft or order at any place within 15 miles from the bank or place at which the same is made payable, which draft or order shall have been lawfully

issued unstamped, may affix a proper adhesive stamp, and cancel such stamp by writing thereon his name or the initial letters of his name, and thereupon such draft or order may lawfully be received and negotiated at any place beyond such distance; s. 8.

The provisions of 17 Geo. 3, c. 30, as to drafts on bankers, repealed; s. 9.

Adhesive stamps denoting the duty of one penny payable on receipts and on drafts and orders, may be used for receipts or drafts, without regard to their special appropriation for the other of such instruments; s. 10.

6. BILLS OF EXCHANGE.

By the 1st section, stamp duties on instruments mentioned in the schedule to this Act, payable under other Acts, are repealed, and the duties named in the schedule are granted in lieu thereof: provided, that nothing herein contained shall repeal or alter any of the stamp duties now payable in relation to any bill of exchange, promissory note, or other instrument drawn, made, or signed, or which shall bear date before or upon the 10th October, 1854.

And by the 2nd section, the new duties by this Act granted are to be denominated stamp duties, and to be under the care of Commissioners of Inland Revenue; and the powers and provisions of former Acts are to be in force.

Under the 3rd section, the duties by this Act granted in respect of bills of exchange drawn out of the United Kingdom shall attach upon all bills paid, indorsed, or otherwise negotiated within the United Kingdom wheresoever the same may be payable, and the duties shall be denoted by adhesive stamps affixed to such bills.

And the 4th section provides, that every bill of exchange which shall purport to be drawn at any place out of the United Kingdom shall for all the purposes of this Act be deemed to be a foreign bill of exchange, and shall be chargeable with stamp duty accordingly, notwithstanding that in fact the same may have been drawn within the United Kingdom.

The holder of a bill drawn out of the United Kingdom must affix an adhesive stamp thereon before negotiating it; s. 5.

A penalty is inflicted of 100*l.* for drawing and issuing, or transferring or negotiating bills purporting to be drawn in a set, and not drawing the whole number of the set; and persons taking or receiving such bills shall not be entitled to recover; s. 6.

The following is the Schedule as to Inland and Foreign Bills and Promissory Notes:—

<i>Inland Bills of Exchange,</i> Draft, or Order for the payment to the bearer, or to order, at any time otherwise than on demand, of any sum of money		Duty.	
		£	s. d.
Not exceeding		5—0	0 1
Exceeding £5 and not exceeding		10—0	0 2
— 10 —		25—0	0 3
— 25 —		50—0	0 6
— 50 —		75—0	0 9
— 75 —		100—0	1 0
— 100 —		200—0	2 0
— 200 —		300—0	3 0
— 300 —		400—0	4 0
— 400 —		500—0	5 0
— 500 —		750—0	7 6
— 750 —		1,000—0	10 0
— 1,000 —		1,500—0	15 0
— 1,500 —		2,000—1	0 0
— 2,000 —		3,000—1	10 0
— 3,000 —		4,000—2	0 0
— 4,000 and upwards		2	5 0

Foreign Bills of Exchange drawn in, but payable out of the United Kingdom,

If drawn singly or otherwise then in a set of three or more, the same duty as on an inland bill of the same amount and tenor,

If drawn in sets of three or more, for every bill of each set,

Where the sum payable thereby shall not exceed :	25—0	0 1
And where it shall exceed		
£25 and not exceed	50—0	0 2
— 50	75—0	0 3
— 75	100—0	0 4
— 100	200—0	0 8
— 200	300—0	1 0
— 300	400—0	1 4
— 400	500—0	1 8
— 500	750—0	2 6
— 750	1,000—0	3 4
— 1,000	1,500—0	5 0
— 1,500	2,000—0	6 8
— 2,000	3,000—0	10 0
— 3,000	4,000—0	13 4
— 4,000 and upwards		0 15 0

Foreign Bill of Exchange drawn out of the United Kingdom and payable within the United Kingdom, the same duty as on an inland bill of the same amount and tenor.

Foreign Bill of Exchange drawn out of the United Kingdom, and payable out of the United Kingdom, but indorsed or negotiated within the United Kingdom, the same duty as on a foreign bill drawn within the United Kingdom, and payable out of the United Kingdom.

<i>Promissory Note</i> for the payment in any other manner than to the bearer on demand of any sum of money	Duty.		
	£	£	s. d.
Not exceeding	5—0	0	1
Exceeding £5 and not exceeding	10—0	0	2
— 10	25—0	0	3
— 25	50—0	0	6
— 50	75—0	0	9
— 75	100—0	1	0

Promissory Note for the payment, either to the bearer on demand or in any other manner than to the bearer on demand, of any sum of money

Exceeding £100 and not exceeding	£	£	s. d.
— 200	200—0	2	0
— 300	300—0	3	0
— 400	400—0	4	0
— 500	500—0	5	0
— 750	750—0	7	6
— 1,000	1,000—0	10	0
— 1,500	1,500—0	15	0
— 2,000	2,000—1	0	0
— 3,000	3,000—1	10	0
— 4,000 and upwards	4,000—2	0	0
	2	5	0

7. BANKERS' NOTES.

By the 11th section, all bills, drafts, or notes (other than notes of the Bank of England) which shall be issued by any banker or the agent of any banker for the payment of money to the bearer on demand, and all bills, drafts, or notes so issued which shall entitle or be intended to entitle the bearer or holder thereof, without endorsement, or without any further or other endorsement than may be thereon at the time of the issuing thereof, to the payment of any sum of money on demand, whether the same shall be so expressed or not, in whatever form and by whomsoever such bills, drafts, or notes shall be drawn or made, shall be deemed to be bank notes of the banker by whom or by whose agent the same shall be issued within the meaning of the 7 & 8 Vict. c. 32; and 8 & 9 Vict. cc. 38 and 37.

All bills, drafts, and notes which under this Act, or the three Acts last mentioned, are declared to be bank notes, shall be subject and liable to the stamp duties payable under any Act in force in respect of promissory notes for the payment of money to the bearer on demand; and shall be deemed to apply to all such bills, drafts, and notes as aforesaid; s. 12.

B. COLONIAL CONTRACTS OF SERVICE.

By the 21st section contracts to serve as clerks, artificers, servants, labourers, &c., in the colonies or possessions abroad are exempt from stamp duty.

9. PAWNBROKERS' LICENCES.

The annual stamp duty of 1*l*. on licences to pawnbrokers in Dublin is reduced to 7*l*. 10*s*.; s. 20.

10. ALLOWANCE OF SPOILED STAMPS.

An allowance of 7½ per cent. is granted on the purchase of stamps at any one time to the amount of 5*l*. on stamps not exceeding 1*l*. on bills, drafts, notes, or orders; s. 24.

No charge is to be made for paper on such bills, drafts, notes, or orders where the duty does not exceed 1*s*.; s. 25.

By s. 26, stamps rendered useless by this Act will be allowed for till the 5th April, 1855.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts of the present Session printed in the present Volume, with an Analysis to each, will be found at the following pages:—

- Income Tax, cc. 17, 24, pp. 46, 134, *ante*.
- Commons' Inclosure, c. 9, p. 64.
- County Court Extension, c. 16, p. 121.
- Registration of Bills of Sale, c. 36, p. 216.
- Warwick Assizes, c. 35, p. 218.
- Attendance of Witnesses, c. 34, p. 235.
- Evidence in Ecclesiastical Courts, c. 47, p. 254.
- Commons' Inclosure (No. 2), c. 48, p. 254.
- Cruelty to Animals, c. 60, p. 275.
- Ecclesiastical Jurisdiction, c. 65, p. 276.
- Highway Rates, c. 52, p. 276.
- Turnpike Trusts' Arrangements, c. 51, p. 276.
- Admiralty Court, c. 78, p. 295.
- Borough Rates, c. 71, p. 298.
- Acknowledgment of Deeds by Married Women, c. 75, p. 299.
- Stamp Duties, c. 83, p. 317.
- Court of Chancery, c. 100, p. 334.
- Bankruptcy, c. 119, p. 335.
- Real Estate Charges, c. 113, p. 339.
- Common Law Procedure Act, 1854, c. 125, pp. 356, 376.
- Usury Laws Repeal, c. 90, p. 396.
- Bribery Act, c. 102, pp. 397, 415.
- Youthful Offenders, c. 86, p. 418.
- Court of Chancery, County Palatine of Lancaster, c. 82, p. 438.

METROPOLITAN SEWERS' ACT.

17 & 18 VICT. c. 111.

THE preamble recites 11 & 12 Vict. c. 112; 12 & 13 Vict. c. 93; 14 & 15 Vict. c. 75; 15 & 16 Vict. c. 64; 16 & 17 Vict. c. 125.

Metropolitan Sewers Acts continued till 31st August, 1855; s. 2.

Pending vacancy in office, or during absence of chairman or deputy chairman, Commissioners present to appoint a person to preside at Court; s. 2.

Limit of amount to be borrowed on security of rates, 600,000*l.*; s. 2.

No priority amongst mortgagees or annuitants, except with respect to existing charges; s. 4.

Securities to continue valid notwithstanding the expiration of the Act or the discontinuance of the Commission; s. 5.

Quarter Sessions of the metropolitan counties to levy rates required for such securities; s. 6.

Separate districts may be formed for sewerage purposes of places where no sewers' rate at present raised; s. 7.

Inhabitants to elect sewerage board of such districts; s. 8.

Mode of elections; s. 9.

Qualification of members; s. 10.

Members of sewerage board to continue in office till 31st August, 1855; s. 11.

Surveyor to be appointed; s. 12.

Power of sewerage board to make rates, &c.; s. 13.

This Act incorporated with 11 & 12 Vict. c. 112; s. 14.

Saving as to certain provisions of 12 & 13 Vict. c. 93, and 16 & 17 Vict. c. 125; s. 15.

The following are the titles and sections of the Act:

An Act to continue and amend the Metropolitan Sewers Acts. [11th August, 1854.]

Whereas an Act was passed in the Session of Parliament holden in the 11 & 12 Vict. c. 112, "to consolidate and continue in force for Two Years, and to the End of the then next Session of Parliament, the Metropolitan Commissions of Sewers," and such Act has been amended by an Act passed in the Session holden in the 12 & 13 Vict. c. 93, and has been further amended and has been continued by an Act passed in the Session holden in the 14 & 15 Vict. c. 75, and an Act passed in the Session holden in the 15 & 16 Vict. c. 64, and an Act of the last Session of Parliament, 16 & 17 Vict. c. 125, and stood continued until the 7th day of August, 1854: and whereas it is expedient to revive and continue the said Acts for such period as herein mentioned, and to amend the same as herein provided: be it therefore enacted, as follows:

1. The said first mentioned Act, as amended by the other Acts hereinbefore mentioned and by this Act, shall be revived and continued in force until the 31st day of August, 1855, in like manner as if the time so limited had been the time originally limited by the said firstly-mentioned Act for the continuance thereof.

2. In case of a vacancy in the office of chairman or deputy chairman under the provisions of the said Act passed in the Session holden

in the 14 & 15 Vict. c. 75, or in case of his or their absence from any Court of Sewers, some other Commissioner shall be chosen, by the majority of the Commissioners present, to preside at such Court; and in case there be an equal number of votes upon such choice, then the person proposed whose name shall stand first in the Commission shall preside; and if there be an equal division of votes upon any question, the person so presiding at such Court shall, in addition to his own vote as a Commissioner, have a second or casting vote, as provided by the said firstly-mentioned Act; and the person so chosen to preside shall have and perform all the powers and duties given to and required to be performed by the Chairman of the Metropolitan Commissioners of Sewers, under the provisions of the said Act passed in the 14 & 15 Vict. c. 75.

3. And whereas by the second section of the said Act passed in the last Session of Parliament, c. 125, it is enacted, that the sum of 300,000*l.* shall be the limit and extent of the debt due and owing on the security of the rates authorised to be made as therein mentioned at any one and the same period of time: and whereas it is expedient to extend the said limit: be it therefore enacted, that the sum of 600,000*l.* shall be the limit and extent of the debt due and owing on the security of the said rates at any one and the same period of time; and that the said second section of the said last-mentioned Act shall be read and construed as if the words "six hundred thousand pounds" had been inserted therein instead of the words "three hundred thousand pounds" wherever such last mentioned words occur therein.

4. All persons to whom at the time of the passing of this Act any sums of money are due and owing on the security of the said rates, whether in respect of any mortgages made under the powers of the said Acts or any of them, or in respect of any securities made and entered into before the issuing of the first Commission under the first of such Acts, and all persons to whom any sums shall become due and owing in respect of any mortgage of the said rates made or to be made in pursuance of a certain deed of agreement bearing date the 20th day of February now last past, and made between the metropolitan Commissioners of sewers of the one part, and Robert Hudson, Charles Bladen Carruthers, and William Beckwith Towse, three of the directors of the Rock Life Assurance Company, of the other part, shall, in respect of such debts and securities, have priority over and be entitled to be repaid the sums so due and owing, or so to become due and owing to them in preference to all other mortgages and annuitants by whom advances shall be made after the passing of this Act; and subject to such priority and preference, every future mortgagee or annuitant shall be entitled to be repaid the sums he shall advance, with interest, or to be paid the annuity which shall be granted to him, without any preference over any other mortgagee or an-

nuitant by reason of any priority of advance, or the date of his mortgage or other security.

6. Notwithstanding the expiration at any time hereafter of the firstly hereinbefore recited Act, or of any Act or provisions incorporated therewith, or in case at any time hereafter no Commission of Sewers shall be in force under the said firstly recited Act all mortgages and annuities which at or immediately before the time of the expiration of the said firstly-recited Act, or of the expiration or determination of the Commission of Sewers which shall have been last in force thereunder (whichever of such events shall first happen), shall be a charge on all or any of the rates authorised to be levied under the said firstly recited Act and the Acts amending the same, shall continue valid and in full force and to be a charge on the districts on which such rates would have been authorised to be levied in case such Acts and Commission respectively had continued in force, and on the property rateable thereto; and, unless Parliament otherwise provide, the Commissioners of her Majesty's Treasury, shall, with all convenient speed after the expiration of the firstly recited Act or the expiration or determination of such Commission, ascertain or cause to be ascertained the liabilities of such districts in respect of such mortgages and annuities, and where any such mortgages or annuities are charged on more than one district shall apportion or cause to be apportioned as between the respective districts charged therewith the liabilities under such mortgages or annuities, and shall certify the amount of charge to which each district is subject in respect of the liabilities ascertained, or ascertained and apportioned as aforesaid, to the clerk of the peace for the county, the justices of which are hereinafter authorised to make rates in respect thereof upon each such district.

6. The justices of the peace for the county of Middlesex in Quarter Sessions assembled shall, as to the parts charged by any such mortgage or annuity which may be situate on the north side of the river Thames, and the justices of the peace for the county of Kent in Quarter Sessions assembled shall, as to the parts so charged within the limits of the sewerage districts known as the Greenwich district and the Ravensbourne district, and the justices of the peace for the county of Surrey shall as to the parts so charged which may be situate on the south side of the river Thames, save and except the said Greenwich district and Ravensbourne district respectively, make, collect, demand, and levy, and exercise all and every the powers and authorities for and with reference to the making, demanding, collecting, and levying of all such rates for the payment of the principal money and interest and annuities, or the apportioned part thereof respectively, certified by the Commissioners of the Treasury as aforesaid to the clerk of the peace of each respective county, as the metropolitan Commissioners of sewers might or could have done in case the said firstly recited Act and any Act or provisions incorporated therewith had not

expired and a metropolitan Commission of Sewers were in force thereunder; and all money raised by means of such rates shall be paid over to such person or in such manner as the said Commissioners of the Treasury may appoint for the purpose of being applied towards payment of the principal and interest and annuities or apportioned part thereof respectively certified as aforesaid.

7. Whereas the area included within the limits of the Commission under the said first-mentioned Act comprises several parts and places in which no sewers' rates have been raised or levied by the Commissioners acting by virtue of any Commission issued under the said first-mentioned Act, and in which such Commissioners have either wholly or for the most part, in pursuance of the discretion vested in them by such first mentioned Act, forborne to exercise their jurisdiction: and whereas it may be convenient to form some of such parts or places into separate districts for sewerage purposes, under the jurisdiction and control of sewerage boards, to be constituted in manner hereinafter-mentioned: be it enacted, that from time to time, upon an application in writing signed by not less than two-thirds in number of the inhabitants of any of such parts and places as aforesaid which it may be proposed to form into a separate district for sewerage purposes, as hereinafter-mentioned, rated to the relief of the poor, describing therein or upon a plan annexed thereto the limits of such proposed district, and its fitness, in respect of extent, situation, fall of the ground, and other circumstances to be formed into a separate district for sewerage purposes, and also showing that the said inhabitants, rated as aforesaid, are desirous of immediately providing sewerage by means of a sewers' rate to be raised in such proposed district, not exceeding 1s. in the pound in the year on the net annual value of the property therein rateable to the relief of the poor, or (in case there shall be no rate for the relief of the poor) upon an estimate of the net annual value of such property by a competent person in that behalf, and showing that fit and proper sewers for such district can be made and provided at a cost which can or may be defrayed by means of such sewers' rate, or by moneys borrowed on the security thereof, and that the sewerage of such district can be conveniently managed and conducted by a sewerage board, to be constituted as hereinafter mentioned, the said Commissioners shall thereupon proceed to examine and consider the said application, and if, on such examination and consideration, they shall be of opinion that the several parts and places in the said application mentioned or referred to can be conveniently and properly excepted from their jurisdiction, and, either alone or together with other contiguous parts and places, formed into a separate district for sewerage purposes, as hereinafter mentioned, they shall and may order and decree accordingly, and thereupon the several parts and places described in such order and decree shall be excepted from the jurisdiction of the said Com-

missioners, and become subject to the jurisdiction and control of a sewerage board, to be appointed in manner hereinafter mentioned.

8. When and as often as any such district shall have been excepted from the jurisdiction of the said Commissioners in manner aforesaid, it shall be lawful for the inhabitants thereof rated to the relief of the poor therein, at a public meeting to be convened in manner hereinafter directed, to elect from their number seven persons, duly qualified, to be and be called to the sewerage board of such district, which board shall be authorised and empowered forthwith to execute and superintend the execution of the works necessary for the sewerage of such district, of which board not less than five shall be a quorum; and within one calendar month next after the date of any such order and decree as aforesaid the churchwardens and overseers of the parish or parishes either wholly or partly situate within such district, or the major part of them, shall and they are hereby required, by public notice to be affixed on the outside of the principal public buildings within the district, to call a meeting of the persons so rated to the relief of the poor as aforesaid, to be holden at a convenient time and place therein, to be specified in such notice, for the purpose of electing seven persons to be and constitute the sewerage board for such district.

9. On the day so appointed for such election the ratepayers then rated to the relief of the poor, and having been so rated for six calendar months next preceding the day of such election, desirous of voting, shall meet at the time and place appointed, and shall then and there elect a chairman from among themselves to preside at such meeting, and shall thereupon proceed to the election of seven persons, qualified as hereinafter mentioned, to be and constitute the sewerage board of such district; and such election shall take place by open voting, and shall be decided by a majority of votes; and in case of an equality of votes the chairman shall have a casting vote; and the chairman shall at such meeting declare the names of the ratepayers who shall have been so elected, and a list of the persons so elected shall be forthwith affixed on the outside of the principal public buildings in such district.

10. The members of every such sewerage board to be elected at each and every election under this Act shall be persons qualified by law to be elected members of the board of guardians of any union wholly or partly within such district.

11. The members of every sewerage board to be elected in manner aforesaid shall continue in office until the 31st day of August, 1855: provided always, that in case of any vacancy in the number of members aforesaid by death, resignation, or otherwise, the majority of the remaining members of such board shall elect another person, qualified as aforesaid, to supply such vacancy.

12. Every such sewerage board shall have

power to employ a surveyor to make a plan of sewerage for such district, and shall be authorised to pay him reasonable remuneration for his services in this behalf; and such plan, when made and approved of by the sewerage board, shall be submitted by them to the said Commissioners, for their consideration and approval, who shall, if they see fit, have power to direct any alteration or modification of such plan, or to direct a new plan to be made; and when a plan of sewerage for such district shall be approved by the sewerage board and by such Commissioners, the sewerage board shall execute the works necessary for carrying such plan into effect.

13. Every such sewerage board shall have, exercise, and observe within their district all the powers, authorities, and obligations as to the making, demanding, levying, and enforcing of rates, and the borrowing of money on the security of such rates, and the execution of works, and the keeping and maintaining the same in repair, and the enforcing of the drainage of houses, and the abolition of nuisances, and all other the powers, authorities, and obligations by the said Acts or any of them given to or imposed upon the Metropolitan Commissioners of Sewers: provided always, that the sewerage board of any such district as aforesaid shall be and is hereby authorised and empowered to raise and levy sewers' rates within the limits of such district for any amount not exceeding in the whole in any one year the amount of 1s. in the pound on the net annual value of the property rateable to such sewers' rate ascertained in manner aforesaid; provided also, that nothing herein contained shall authorise or empower any sewerage board constituted in manner aforesaid to cause any of their sewers, constructed by them under the provisions hereinbefore contained, to communicate with or discharge into any of the sewers of the Metropolitan Commissioners of Sewers, without their consent in writing first had and obtained.

14. This Act shall be deemed to be incorporated with "The Metropolitan Sewers' Act, 1848," and shall be construed and taken as if this Act and "The Metropolitan Sewers' Act, 1848," were one Act.

15. Provided always, that this Act shall not be taken to abridge the continuance of so much of the said Act of the 12 & 13 Vict. c. 93, and of so much of the said Act of the 16 & 17 Vict. c. 125, as will not expire on or before the said 7th day of August, 1854.

NOTICES OF NEW BOOKS.

On the Right and Cost of Redeeming Property Mortgaged to Benefit Building Societies, and Freehold Land Societies. By J. H. JAMES, of the Middle Temple, Esq., Barrister-at-Law. London: Butterworths. Pp. 132. 1854.

THE design and scope of this volume are thus stated in the preface:—

"The 'Right and Cost of Redeeming Property Mortgaged to Building Societies' is, from the extent and importance of the operations of those institutions, a subject deeply interesting to the Profession, the societies, their members, and the public. In the endeavour, therefore, to deal with the various questions incident to the mixed pecuniary and legal character of the transaction (as to which the aggregate value of the freehold and leasehold estates held in security must now amount to millions of pounds sterling) no little difficulty was felt to render the present volume really and generally useful.

"To have treated the subject either exclusively in a professional or a popular manner, would, it is believed, have failed to effect the purpose for which, it is conceived, such a work is at this time necessary—namely, to afford both to professional and non-professional persons a practical view of the principles upon which, it is submitted, a redemption of property mortgaged to building societies ought to be conducted, and of the existing state of the law in relation thereto.

"To attain this end, it was deemed expedient, from the imperfect knowledge which many members of the Profession, and the majority of the public, have of the constructive elements of building societies, to enter somewhat fully into their history, the various forms of their constitution, their objects, and the mode in which they are carried out. Hence, many points have been unavoidably introduced, and some matter repeated, which might otherwise be thought out of place, or unnecessary to a subject which, on a first and superficial consideration, might be readily supposed to be capable of discussion within very narrow limits."

The work treats, 1st of the history of Benefit Building Societies, with a summary of the Act by which they are regulated. 2nd. The constitution and objects of Building Societies and precautions to be observed by persons joining them. 3rd. Practical suggestions on the selection of property to be purchased. 4th. The rules affecting payment or subscriptions and redemption of the mortgages. 5th. The rules affecting the redemption of mortgages. 6th. Practical suggestions as to the right and cost of redeeming mortgaged property. 7th. The law in relation to the redemption of mortgaged property. 8th. On the adjudicated cases in Chancery and Common Law.

The Appendix contains the reports of cases and the Act of Parliament.

Mr. James has carefully executed the design of his work, which appears to be useful both to solicitors and members of building societies.

REPORT OF THE COMMISSIONERS OF PATENTS.

THE Commissioners of Patents, appointed under the Act 15 & 16 Vict. c. 83, in compliance with the terms of the third section of that Act, make the following Report of all their proceedings under and in pursuance of the same, from the 1st October, 1852, to the 31st December, 1853.

The Act was passed on the 1st July, 1852, and commenced and took effect from the 1st October following.

The Lord Chancellor and the Master of the Rolls for England, and the several law officers of England, Scotland, and Ireland for the time being, are appointed by the Act Commissioners of Patents for Inventions.

The late Lord Chancellor (Lord St. Leonards), the Master of the Rolls (Sir John Romilly), the late Attorney-General for England (Sir Frederic Thesiger), and the late Solicitor-General for England (Sir Fitzroy Kelly), alone acted as Commissioners at the commencement of the Act, and brought it into operation.

The law officers of Scotland and Ireland, not being in England at the commencement of the Act, took no part in the proceedings, and as the functions of these officers, in respect of patents for inventions, are entirely abolished, it is not to be supposed they will be called upon at any future time to act as Commissioners.

The Act recognised three separate and distinct offices for the passing of patents. The Great Seal Patent Office, being the ancient office of Chancery for the passing of patents; a new office to be called the Commissioners' Office; and the office of the Attorney and Solicitor General for making out the warrants for the patents.

The Commissioners, however, thought it advisable for the public convenience to consolidate the three offices; and with this object the Lord Chancellor (Lord St. Leonards), by order of the 1st October, 1852, pursuant to the 28th section of the Act, appointed the Great Seal Patent Office to be the office of Chancery for the filing of specifications of patents. The Commissioners, by order of the same date, directed the Great Seal Patent Office, in respect of patents for inventions, and the office of the Commissioners to be combined, and the clerk of the patents for the time being to be the clerk of the Commissioners under the Act; and by a subsequent order, the late Attorney and Solicitor-General directed the warrants of the law officers for the patents, theretofore made in the office of the patent clerk of the Attorney-General, to be in future made in the office of the Commissioners.

In pursuance of these several orders the whole business of the Commissioners relating to patents, from the petition for the allowance of provisional protection to the printing, publication, and sale of the specification, is conducted in one office.

The office of the Commissioners is in Southampton Buildings, Chancery Lane, in a set of chambers lately occupied by the Masters in Chancery, and is open to the public from ten to four o'clock every day.

By the consolidation of the three offices a large saving is effected in the salaries of officers and clerks, and in the rent and furnishing of offices; the business is placed under the immediate control of the Lord Chancellor and the Commissioners; they communicate with one office; simplicity and uniformity of practice is secured, and the applicant has the great advantage of one office of resort and for information in all the several stages of his patent.

Under the old law, a patent for an invention passed through nine stages in seven separate offices, situated in parts of the town distant from each other.

The number of applications for provisional protection recorded within the fifteen months, from the 1st October, 1852, to the 31st December, 1853, was 4,256; the number of patents passed thereon, all having become due on the 30th June last, was 3,099; and the number of applications lapsed or forfeited, the applicants have neglected to proceed for their patents within the six months of provisional protection, was 1,157.

The number of applications recorded within the first three months of the operation of the Act was 1,211.

The number of applications recorded within the year 1853 was 3,045.

Though the Act received the Royal Assent on the 1st July, 1852, yet its operation was deferred to the 1st October following. During the intervening period almost all applications for patents were suspended, and this sufficiently accounts for the large number of applications (1,211) recorded within the quarter ending 31st December, 1852, as compared to the number (3,045) recorded for the whole year 1853.

The number of applications recorded in the first six months of the current year was 1,440, showing a probable decrease of 165 applications upon the year 1854, as compared to the number of the year 1853.

All the specifications filed in the office upon the patents passed under the Act, from 1st October, 1852, to the 30th June last, 3,099 in number, have been printed and published, together with lithographed outline copies of the drawings accompanying the same; and the prints are sold to the public, either separately or in the series for the year, at the cost price of the printing and paper. The price of a print of the average length of letter-press, and drawings, is 8d.

There is no arrear in the printing and publication of the specifications filed since the commencement of the Act. Each specification is printed and published within three weeks of its deposit in the office.

Under the 15 & 16 Vict. c. 115, s. 4, a printed copy of a specification, duly certified and sealed in the Commissioners' office, may

be received in evidence of the original document in any Court within the United Kingdom and the colonies; the printed copy is certified on payment by the applicant of 1s. for the seal, and the charge of the draftsman for colouring the prints of drawings is paid by the applicant.

Printed certified copies of all the specifications filed in the office, from the 1st October, 1852, to the present time, with coloured printed copies of the drawings, have been sent to the office of the Director of Chancery in Edinburgh, and the enrolment office of the Court of Chancery in Dublin, pursuant to the Act, 1852, and the Act 16 & 17 Vict. c. 115; and such copies are open to the inspection of the public in the respective offices.

Certified copies of all the patents passed since the commencement of the Act, and certified copies of the record books of assignments of patents and licences, with copies of such assignments and licences, have also been sent to the Chancery offices in Edinburgh and Dublin, pursuant to the Act.

The whole series of specifications of patents for reaping machines, and the drawings accompanying the same, from the first enrolled, 4th July, 1799, to the present time, have been printed and published, and are sold at the cost price of the printing and paper, either separately, or altogether with an appendix, in one volume. The Appendix, compiled by Mr. Woodcroft from a great variety of authorities and works, describes the instruments for reaping grain, published and in use, from the earliest period to the present time.

The whole series of specifications of patents for fire-arms, cannon, shot, shells, cartridges, weapons, accoutrements, and the machinery for their manufacture, and the drawings accompanying the same, from the earliest recorded, 15th May, 1718, to the present time, have been printed and published in like manner. An appendix is in preparation, and will shortly be published.

The Secretary of State for the Home Department has required the publication of the old specifications of patents for the consumption of smoke in furnaces, and for the making of drainage tiles applicable to sewerage; and the Board of Admiralty has required the publication of the specifications of patents for improvements in propelling ships; these three subjects are now in preparation.

Pending the publication of the old specifications, necessarily a work of time, printed certified copies for evidence in Courts of justice, for counsel and for other purposes, of any of the old specifications, may be obtained on application at the Patent Office, the applicant paying the cost of putting the drawings upon the stone and colouring the number of prints he may require, and the Commissioners paying the cost of letter-press and paper, or in the absence of drawings, the applicant paying the cost of letter-press and paper; by this arrangement the applicant obtains 12 or 14 certified printed evidence copies at a low price, and the

Commissioners obtain the prints of drawings, or the letter-press and paper, for their future publication of the specification free of cost. 100 old specifications have been printed in this manner within the last few months.¹

Mr. Woodcroft's chronological and alphabetical indexes of all the specifications of patents enrolled in Chancery, from 1617 to the 1st October, 1852, 14,359 in number, have been published in three imperial octavo volumes, and are sold at 50s., the cost price of printing and paper. Mr. Woodcroft's index, arranging these specifications according to the subject-matter, is in the hands of the printer, and will shortly be published.²

Indexes in the same chronological, alphabetical, and subject-matter form of all the specifications filed in the office under the new law, will be made in continuation, and published periodically.

The prints of specifications, the indexes, and all other printed papers will in future be sold in the Patent Office, and not at the Queen's printers as heretofore. The publications are sold to all persons applying for them at the cost price of each, and no trade discount is allowed. Booksellers and agents, however, charge a commission to the persons for whom they purchase these works.

The Commissioners have established a public library of research within the Patent Office, to consist of scientific and mechanical works of all nations; convenient rooms are provided for the purpose, and the library will be open to the public within a few weeks.

A journal entitled "*The Commissioners of Patents' Journal*" has been published twice a week since the commencement of the present year, and it will be continued. It contains the various notices appearing in the *Gazette* on the subject of patents, and a variety of other notices and useful information and instruction for the guidance of applicants in proceeding for their patents. It is proposed to publish in the journal the names of patentees, and the titles of patents granted in other countries; also a notification from time to time of the date of the expiration of each patent as it may become void, either by reason of nonpayment of the stamp duties of 50*l.* and 100*l.* at the expiration of the third and seventh years respectively, pursuant to the Act, or at the full term of 14 years; and also from time to time a list of the inventions provisionally protected, lapsed or forfeited by reason of the applicants having neglected to proceed for their patents within the six months of provisional protection. The price of the journal to subscribers is 30*s.* per annum.

¹ This is an important and convenient arrangement for facilitating certain parts of the trial of a patent case.

² This publication will evidently be very valuable to the Profession.—Ed.

MEETING OF PROVINCIAL SOLICITORS AT LEEDS.

We have already noticed the Liverpool, Manchester, and Yorkshire Law Societies; from which deputations will proceed to Leeds, to attend the meeting on Wednesday, the 18th instant. And we now subjoin the names of the other Associations who will be represented at this general gathering of the Profession.

The *Hull Law Society* have deputed Mr. W. H. Moss, the President; Mr. Hill, the Vice-President; Mr. Stamp, the Secretary of the Society, and Mr. Shackles.

The *Bristol Law Society* have deputed their Secretary, Mr. Wambrough.

The *Birmingham Law Society* have appointed Mr. Urett and Mr. Ryland, as their delegates.

The *Lincolnshire Law Society* will also send a deputation of three members.

A deputation will also attend from *Coventry*.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

ALTHOUGH our readers were informed, from time to time, of the Acts which were passed during the last Session of Parliament, and in August were presented with a review of the results of the Session, so far as the Statutes passed in any way affected the Profession,¹ it may be useful to lay before them the circular just issued by the Metropolitan and Provincial Law Association, in which, in accordance with a wish expressed by many of the members, a general account is given of such laws of the Session as are most likely to require the attention of the members. Amidst the alterations in the law and practice which are constantly taking place, these summary reviews are peculiarly useful to the practitioners.

Common Law, 17 & 18 Vict. c. 125. — Of these the most important is the *Common Law Procedure Act*, 1854, which might, in fact, be more properly be called the "*Common Law and Equity Procedure Act*," as some of its most important sections (by section 103), are made to apply to every "*Civil Court of Judicature*." This Act not only makes most important alterations in the practice of *Common Law*—as, for example, compulsory reference to arbitration; giving power to the Judge to try a cause without a jury; dispensing with attesting witnesses; and stamping deeds at the trial—but it also gives to the Courts of *Common Law* some of the most important functions

¹ See p. 293, ante.

hitherto exclusively exercised by the Courts of Equity; such as compelling discovery, compelling specific performance by mandamus, and restraining by injunction. Another most important change is, that the power of attaching money of a debtor in the hands of third persons, hitherto only existing in the Lord Mayor's Court, and one or two other Courts of very limited local jurisdiction, is now given to the Superior Courts, accompanied by a power to examine the debtor as to the debts due to him. This Act should, therefore, be carefully studied in detail by every practitioner, and we will here only indicate a few of its leading features.

By the first section the parties to any cause may, by consent in writing, leave the decision of any issue of fact, together with the amount of damages to be assessed, to the Court, without the assistance of a jury.

Sections 3 to 17 contain elaborate provisions as to the determination of questions by arbitration, enabling either party to take out a summons and apply for a compulsory order of reference, and also providing for the mode in which references are to be conducted in pursuance of any arbitration clause, in any deed or instrument to be hereafter made or executed.

Section 18 allows the privilege to counsel of a second address to the jury to sum up the evidence.

Section 19 enables the Court to adjourn any trial upon such terms as they may think fit.

Sections 20 and 21 extend the privilege of refusing to be sworn to any parties who can affirm that the taking of any oath is, according to his religious belief, unlawful.

Sections 22 to 27 contain important provisions with regard to evidence; regulating the power of discrediting witnesses, cross-examining as to written statements, dispensing with the necessity of proving written instruments by the examination of the attesting witness, with certain exceptions, and enabling the Judge and jury to judge of disputed handwriting by comparison.

Sections 28 to 31 contain provisions enabling parties to supply stamps, where necessary, to documents at the trial.

Then follow provisions as to applications for a new trial, as to appeal, and as to the right of filing affidavits upon new matter.

Section 46 gives power to the Court or a Judge from time to time to direct the oral examination of witnesses, in cases amongst others where affidavits have been requested and refused.

Section 50 gives power to the Court or Judge, upon the application of either party, to compel the discovery of any documents material to the cause.

Section 51 enables either party at any time, with leave of the Court or Judge, to deliver written interrogatories to the opposite party, to be followed, if necessary, by their oral examination.

Sections 60 to 67 contain provisions extending universally the right of attachment, hitherto

to confined to one or two local Courts, with the very important further provision that judgment debtors may be personally examined as to debts due to them.

Sections 68 to 77 give power to the Common Law Courts to issue peremptory writs of mandamus to compel the performance of any duty for the breach of which they have hitherto only been able to award damages.

Section 78 enables them to order the specific delivery of chattels.

Sections 79 to 81 enables them to issue writs of injunction to restrain the repetition, or continuance, of any breach of contract, or injury.

Sections 83 to 86 enable either party to plead equitable matter.

Section 87 provides for actions on lost instruments.

Section 92 enables either party to compel the continuance or abandonment of an action which has abated in consequence of the death of parties.

Section 96 contains a general power of amending all proceedings under the Act.

Section 100 extends the provisions of the Act to the local Courts at Lancaster and Durham.

Section 103 extends the application of sections 19 to 32 to every Civil Court of Judicature in England and Ireland.

Section 105 enables her Majesty, by Order in Council, to direct all or any part of the Act to extend to any Court of Record in England or Wales.

By Section 104 the Act comes into operation on the 24th October next.

17 & 18 Vict. c. 34.—Another short but important Act has been passed to enable the Courts of Law in England, Ireland, and Scotland, to compel the attendance of witnesses out of their jurisdiction.

County Courts, 17 Vict. c. 16.—The County Court Extension Act Amendment Act is an Act of two sections, providing, by the first, that the right of appeal given by the 13 & 14 Vict. c. 61, s. 14, shall extend to all cases in which jurisdiction is given, under a memorandum of consent, by the 17th section of the same Act; but enabling the parties, by consent, to exclude such right of appeal.

By the second section, the provisions of the 15 & 16 Vict. c. 54, s. 18, by which the registry of County Court judgments was established, are extended to all cases of petition to the County Courts for protection from process.

Equity, 17 & 18 Vict. c. 100.—Only one Act has this Session been passed on the subject of Equity, by which, in order to assist the Masters in despatching the matters still in their offices, they are enabled to inquire respecting the abatement of any suits, and cause proceedings to be taken to revive the same according to the provisions of the Court of Chancery Amendment Act, 15 & 16 Vict. c. 86; and in case no parties duly proceed with the matter, the suit may be continued and disposed of by the solicitor to the Suitors' Fund.

The Masters are also empowered, if they

shall think fit, to obtain the assistance of an accountant, and the Lord Chancellor may appoint additional temporary clerks in the Masters' offices.

It will be seen that in the preamble to this Act, it is recited that better provision is required for the examining and settling the accounts of receivers and others in the said Court, while the Act itself does not contain any such better provision. The explanation of this is, that the Act, as introduced by the Lord Chancellor, contained provisions for the appointment of two new officers, to be called Clerks of Receivers' Accounts. These provisions were passed by the House of Lords, but struck out by the House of Commons, who, however, allowed the recital of their necessity to remain in the preamble.

Bankruptcy, 17 & 18 Vict. c. 119.—By the Bankruptcy Act, 1854, the existing vacancies in the Office of Commissioner at Birmingham and Bristol, and the Registrar at Bristol, are not to be filled up without a special order of the Lord Chancellor, and the Lord Chancellor is empowered to declare that the future vacancies shall not be filled up without his special order.

The Lord Chancellor may also appoint temporary or other substitutes in case of the illness or other absence of any Commissioner or Registrar.

No vacancy in the office of messenger or usher is to be filled up without the sanction of the Lord Chancellor.

His lordship is, within six months after the passing of the Act, to issue an order, which he may vary from time to time, regulating the remuneration of the official assignees.

His lordship also may vary, diminish, or abolish, but not increase, the existing Court fees.

The power to make the General Rules and Orders, which by the Bankrupt Law Consolidation Act was conferred upon the Commissioners, subject to the Lord Chancellor's approval, is transferred to the Lord Chancellor, with the assistance of the Lords Justices, and any two or more of the Commissioners.

Declarations of insolvency are henceforth to be filed in the Court within the district of which the trader shall have resided or carried on business, for the preceding six calendar months, and copies are to be sent by the county registrars to the chief registrar in London.

Traders petitioning themselves to become bankrupt are to show an estate available to produce 150*l.*, instead of, as heretofore, 5*s.* in the pound.

Bankrupts are to be allowed excepted articles to the value of 20*l.*, in the way that insolvents are at present, and household furniture, tools, and implements of trade, are not to be sold without the previous order of the Commissioner.

Bills of Sale, 17 & 18 Vict. c. 36.—Another important Act effecting the Law of Debtor and Creditor has been passed, rendering it necessary to register bills of sale within 21 days after

their execution, in order to make them valid, in like manner as a warrant of attorney is now required by law to be filed, thus carrying out the policy of the law to prevent the obtaining credit on property ostensibly in their possession but secretly assigned.

Friendly Societies, 17 Vict. c. 25.—Four Acts have been passed in relation to unincorporated societies; by the first, the provision of the "Industrial and Provident Societies Act, 1852," have been altered so far as concerns the manner in which legal proceedings are to be carried on, and all suits and proceedings are henceforth to be carried on in the name of some officer of the society, to be appointed for the purpose, within one calendar month after the passing of the Act.

The Act also contains various provisions as to the service of process, abatement of proceedings, the effect of judgments, &c.

17 & 18 Vict. c. 56.—The Friendly Societies' Discharge Act, 1854, has been passed merely to make provision for certain friendly societies established under the early Acts, and excluded from the privileges secured by the later Acts, in consequence of their granting policies of assurance to an amount larger than that limited by all the recent Acts.

The privileges of friendly societies are now extended, with certain modifications, to these societies also.

17 & 18 Vict. c. 101.—An attempt was made during the past Session to pass an Act consolidating and amending the whole law of friendly societies; it, however, was not allowed to pass, and, in consequence, the usual short Act was passed, continuing the existing laws, which are all temporary, for another year.

This Act also contains a provision that all the rules now deposited with the clerks of the peace shall be taken off the file and sent to the registrars.

Literary and Scientific Institutions, 17 & 18 Vict. c. 112.—Another Act, of very great importance, has been passed "to afford greater facilities for the establishment of Institutions for the promotion of Literature and Science and the Fine Arts, and to provide for their better regulation."

By this Act, lands may be conveyed, to be held for the benefit of such institutions, by a short form of grant, and the societies are given a regular legal constitution with power to sue and be sued by their officers, to make and enforce bye-laws, recover arrears of subscriptions from their members, and impose pecuniary fines.

The Act is to apply "to every institution for the time being, established for the promotion of science, literature, the fine arts, for adult instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading rooms for general use among the members, or open to the public; or public museums and galleries of paintings, and other works of art; collections of natural history; mechanical and philosophical inventions, instruments, or designs."

Usury, 17 & 18 Vict. c. 90.—By the Usury Laws Repeal Act, all the Laws against Usury, and those providing for the Enrolment of Annuities, are repealed, and free trade in money is established.

Real Property.—By the 17 & 18 Vict. c. 75, it is provided that the acknowledgment of any deed by a married woman which has been already taken, shall not be impeachable by reason only of the party before whom it was taken being interested.

The Act does not contain any provision for deeds acknowledged since it was passed, except that it empowers the Court of Common Pleas to make rules for preventing Commissioners who are interested from taking acknowledgments.

17 & 18 Vict. c. 113.—Another short Act has been passed to amend the Law relating to the Administration of the Estates of Deceased Persons, by which it is enacted that the heir or devisee of real estate shall not claim the payment of any mortgage debt out of the personal assets until the real estate charged has been exhausted.

Stamps, 17 & 18 Vict. c. 83.—Another important Act has been passed affecting stamps, and imposing new and very much diminished duties upon bills of exchange, promissory notes, leases for a term exceeding 35 years, conveyances in consideration of an annual sum payable in perpetuity, or for any indefinite period, and licences to demise copyholds.

The Act also contains some other important provisions, which require immediate attention; among them, it is enacted that unstamped bankers' drafts are not to be circulated beyond 15 miles from the place they are made payable, under a penalty of 50*l*.

If lawfully issued unstamped (*i. e.*, put into circulation within the 15 miles) they may be circulated to any distance with an adhesive stamp.

The 1*l*. stamp for receipts and for drafts may be used indiscriminately.

Country bank notes are to be subject to the same duties as inland bills of exchange. Letters sent by the general post, acknowledging the safe arrival of money or securities, are to be liable to the 1*l*. receipt stamp.

The sale of a goodwill is to be a sale of property requiring an *ad valorem* stamp.

Leases for a period less than a year are to be charged with a stamp which would be chargeable on a lease at a yearly rent of the same amount as the sum reserved.

Unstamped instruments are to be admitted as evidence in criminal proceedings.

Criminal Law, 17 & 18 Vict. c. 38.—The following Acts have been passed in Criminal Law. The 17 & 18 Vict. c. 33, for the Suppression of Gaming Houses, containing very stringent penal provisions against obstructing the entrance of constables into any suspected house; making any obstruction itself evidence of the house being a gaming house; making it penal for persons apprehended to give false names or addresses; and enabling the justices

to examine on oath any person found in any such suspected house.

The 17 & 18 Vict. c. 60, for the more effectual prevention of Cruelty to Animals, enabling persons who impound animals and provide food for them to recover their expenses, and extending the prohibitions against using dogs for the purpose of draught, contained in 2 & 3 Vict. c. 47, to all parts of the United Kingdom.

The 17 & 18 Vict. c. 79, for further regulating the Sale of Beer, Wine, and Spirits on the Lord's Day; by which all licensed houses are to be closed between half-past two and six o'clock, and after ten on Sundays, except to *bond fide* travellers, under a penalty of 5*l*. for every act of sale.

The 17 & 18 Vict. c. 86, for the Better Care and Reformation of Youthful Offenders in Great Britain; by which voluntary institutions, on obtaining a certificate from the Secretary of State for the Home Department, are to be considered reformatory schools within the meaning of the Act; and any offender under 16 years of age, if sentenced to be imprisoned for not less than 14 days, may, at the expiration of his imprisonment, be sent to any reformatory school, the directors or managers of which shall be willing to receive him, for a period not less than two years, and not more than five years. The Act also contains provisions for defraying the cost of maintenance of offenders at reformatory schools, for enforcing discipline at the schools, and for recovering a portion of the costs from the parents of the offender.

17 & 18 Vict. c. 109.—The Middlesex Industrial Schools' Act is a local act for the provision, regulation, and maintenance of county industrial schools in Middlesex. These schools are to be reformatory schools for juvenile offenders, that is, persons above seven and under 14 years of age, to be supported by the county rates.

Ecclesiastical, 17 & 18 Vict. c. 47.—Two short Acts have been passed in default of the promised general measure of reform of the Courts held at Doctors' Commons, by the first of which, 17 & 18 Vict. c. 47, the Ecclesiastical Courts are empowered to summon and examine witnesses *ex officio*.

And by the second, 17 & 18 Vict. c. 78, Commissioners to administer oaths in Chancery are empowered, also, to administer oaths in the Court of Admiralty; and the Judge of the Admiralty Court is further empowered to appoint any proctor, solicitor, or notary public, to be a Commissioner to administer oaths in Admiralty.

The Act contains other provisions affecting the powers of the Court, and providing that the fees are to be collected by stamps.

Taxes.—The 17 Vict. c. 1, is an Act to explain and amend the Act of last Session, 16 & 17 Vict. c. 90, relating to assessed taxes, and to authorise Justices of the Peace in Ireland to administer oaths relating to income-tax.

The 17 Vict. c. 10, double the income-tax

for the first half of the year commencing 6th April, 1854.

The 17 Vict. c. 54, extended the double tax "during the present war," and until the "6th day of April next, after the ratification of a definite treaty of peace."

The 17 & 18 Vict. c. 40, extends the abatement of income-tax in respect of insurance on lives to the increased income-tax, and until the 5th of July, 1855.

The 17 & 18 Vict. c. 85, enacts that collectors of taxes are to give security to the Commissioners of Inland Revenue, and are to give receipts on printed forms, and to fill up to the counterfoils.

Social Law.—The 17 & 18 Vict. c. 31, is for the better regulation of railway and canal traffic, in order to compel the companies to receive and forward traffic without unreasonable delay, and without partiality. The Act gives a summary remedy by motion or summons to the Superior Courts, and empowers the Judges to make such regulations as may be necessary for proceeding under the Act.

By 17 & 18 Vict. c. 95, the Board of Public Health is reconstituted with provisions for the appointment of officers, and a transfer of the powers of the old Board.

The 17 & 18 Vict. c. 87, is an Act to enable the councils of provincial boroughs to provide burial boards.

Election Law, 17 & 18 Vict. c. 102.—The Corrupt Practices Prevention Act, 1854, is an Act to consolidate and amend the laws relating to bribery, treating, and undue influence at elections of members of Parliament. This Act is of course only applicable to elections, and when wanted must be studied in detail; and it would, therefore, be useless to do more here than indicate its title and object.

Merchant Shipping.—The law upon this subject has hitherto been scattered over no less than 48 Statutes, the whole of which are now repealed by the 17 & 18 Vict. c. 120, with certain exceptions therein mentioned, and the whole law upon the subject is now contained in that Act and 17 & 18 Vict. c. 104 (the Merchant Shipping Act, 1854). This Act contains 548 sections, besides the schedule. It is divided into 11 parts, which deal respectively with the following subjects:—1. (Sections 6 to 16).—The Board of Trade. 2. (Sections 17 to 108).—The Ownership, Measurement, and Registry of British Ships. 3. (Sections 109 to 290).—Masters and Seamen. 4. (Sections 291 to 329).—Safety and Prevention of Accidents. 5. (Sections 330 to 388).—Pilots. 6. (Sections 389 to 416).—Lighthouses. 7. (Sections 417 to 431).—Mercantile Marine Fund. 8. (Sections 432 to 501).—Wrecks, Casualties, and Salvage. 9. (Sections 502 to 516).—Liability of Ship-owners. 10. (Sections 517 to 543).—Legal Procedure. And 11. (Sections 544 to 548).—Miscellaneous. With regard to this Act, also, it is obviously impossible here usefully to do anything more than to give this general summary.

SELECTIONS FROM CORRESPONDENCE.

THE CLERKS' HALF-HOLIDAY.

SIR,—I think this movement might be promoted, if you were to publish in your columns a list of those solicitors in London who at present allow a half-holiday on the Saturday. I think this would stimulate many to commence the good practice, who are waiting for the Lord Chancellor's order, therefore, I would suggest, that you be furnished with the names of the gentlemen who at present give the half-holiday, in order that the same may be published, and that further names, when received, will be published from time to time in your journal.

GULIELMUS.

We shall willingly attend to this request.—
ED.

LEASEHOLDS.—HUSBAND AND WIFE.

What is the practice with reference to a wife's leasehold property, which the husband is wishful to dispose of? Is it necessary that the wife should join in the assignment of it, or can the husband alone give a sufficient title to a purchaser?
LEX.

RUNOUR OF PROFESSIONAL EMBARRASSMENT.

It rarely happens that solicitors, particularly of eminence, fall into pecuniary difficulties. Their rise to eminence is the result of prudence, skill, and integrity; and these qualities long exercised are rarely changed for speculation and an overhaste for riches. Yet lawyers are not exempt from imperfection, and sometimes they embark in adventures for which they are altogether unfitted; and in such cases they are frequently unsuccessful.

We need not marvel that when a Lawyer ventures to enter the field with a member of the Stock Exchange, or any of the vast class of railway, mining, or other joint-stock speculators, and is unfortunate in his dealings, the most scandalous stories are circulated to his prejudice. We admit that an attorney should confine himself strictly to his profession; yet we know that throughout the country many professional men are engaged in various speculations in railways, banking concerns, and mines of various kinds. Looking at the changes which have taken place in the emoluments of the Profession since the flood of Law Reform set in, it is not to be wondered at, though regretted, that men should endeavour

to make up their losses one way by gains in another.

It appears that certain eminent solicitors, or some of the firm, have been tempted into speculations which have turned out most adversely; and they are consequently involved in pecuniary difficulties. Some wholly unfounded imputations on their character have been made in some of the newspapers, and the chief partner has therefore addressed a letter to the editor of *The Times*, in which he states that—

“The criminal charges imputed by the paragraph in question are so wholly untrue and without the *shadow of a foundation*, so far as it can be conceived to relate to me, or to any member of my firm, that I have forborne to notice it publicly until I find a general impression to prevail, that I am the person indicated in it, and that silence on my part may be misconstrued. And I would even now abstain from intruding myself upon the public, but as another paragraph appeared in a daily paper of Tuesday last, in which I am specifically named, I venture to hope that you will permit me, through your columns, to give the *most entire contradiction* to the criminal charges imputed by the paragraph in question.”

[We understand that the losses sustained by the firm have arisen from becoming surety for a relation in Wales.]

The firm in question has always been held in such high esteem, that we should not have deemed it necessary to notice the rumour, but for the very general conversation on the subject amongst professional men.

LIST OF LOCAL AND PERSONAL ACTS.

17 & 18 VICT.

[Continued from p. 451.]

23. An act to enable “The Burry Port Company” to raise additional Capital, and to make arrangements for the satisfaction of the Mortgage and other Debts due from the Company; and to amend the Acts relating to the Company; and for other purposes.

24. An act to enable the Whitehaven Junction Railway Company to raise a further Sum of Money, and to amend the Acts relating to the said Railway.

25. An act for improving and maintaining the Harbour or Port of Port Gordon in the County of Banff.

26. An act of lighting with Gas Bacup, Waterfoot, Newchurch, Rawtenstall, Crawshaw Booth, and other places in the Forest of Rossendale in Lancashire.

27. An act for supplying with Water the Town and Municipal Borough of Clitheroe in the County of Lancaster.

28. An act for enabling the Mayor, Alder-

men, and Citizens of the City of Manchester to widen certain Streets in and otherwise improve the said City; to raise a further Sum of Money; and for other purposes.

29. An act to amend an act intitled “An Act for incorporating the Madras Railway Company, and for other Purposes connected therewith.”

30. An act for better supplying the Inhabitants of the Parish of Harrow in the County of Middlesex with Water.

31. An act for the Improvement of the City of Hereford, and for other purposes, and of which the Short Title is “The Hereford Improvement Act, 1854.”

32. An act for building a Bridge over the River Tame, to connect the Borough of Ashton-under-Lyne with the Township of Dukinfield.

33. An act for more effectually lighting with Gas the Town of Cardiff and certain Parishes thereto in the County of Glamorgan.

34. An act for making and maintaining Docks in the Borough and County of Newcastle-upon-Tyne.

35. An act to enable the Mayor, Aldermen, and Burgesses of the Borough of Weymouth and Melcombe Regis in the County of Dorset to provide Market Houses for the Sale of certain marketable Commodities, and to erect and maintain an improved Pier or Landing Place within the Borough; and for other purposes.

36. An act to repeal the Act relating to the Ridgill and Lanes and Holehouse Turnpike Road, and to make other Provisions in lieu thereof.

37. An act to enable the Company of Proprietors of the Birmingham Waterworks to raise further money.

38. An act for the Extension of the Manchester Corporation Waterworks, and for other purposes, and of which the Short Title is “The Manchester Corporation Waterworks Act, 1854.”

39. An act to enable the New River Company to construct certain Sewers, Drains, and other Works in and near the Town of Hertford; and for other purposes.

40. An act for the Improvement of the Town of Wellington in the County of Salop.

41. An act for paving, lighting, watching, draining, cleansing, regulating, and otherwise improving the Town of West Hartlepool and part of the Township of Stranton in the County of Durham; for providing a Cemetery; and for other purposes.

42. An act to enable the Brighton and Hove General Gas Company to raise a further Sum of Money; and for other purposes.

43. An act for granting certain Powers to “The National Assurance and Investment Association.”

44. An act to amend the Act incorporating the Great Indian Peninsula Railway Company, and for other purposes connected therewith.

45. An act for making new Docks and other Works at Belfast, and for other purposes, and of which the short title is “The Belfast Dock Act, 1854.”

46. An act for more effectually protecting certain Lands forming part of the Rossall Estate in the Township of Thornton in the Parish of Poulton le Fylde, in the County of Lancaster, from Inundation by the Sea.

47. An act to renew the Term and continue certain of the Powers of an Act passed in the 7th year of the reign of his Majesty King George the Fourth, intituled "An Act for making and maintaining a Turnpike Road from South Shields to White Mere Pool, and from thence to join the Durham and Newcastle Turnpike Road at Vigo Lane, with a

Branch from Jarrow Slake to East Boldon, all in the County of Durham.

48. An act to renew the Term and continue the Powers of an Act passed in the 9th year of the reign of his Majesty King George the Fourth, intituled "An Act for more effectually repairing and improving the Roads from Kippings Cross to Wilsley Green, and from a place near Goudhurst Gore to Stilebridge, and from Underden Green to Wanshutte Green, all in the County of Kent.

[To be continued.]

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lords Justices.

In re Boyle, ex parte Turner. July 8, 1854.

SOLICITOR AND CLIENT. — TAXATION OF BILLS OF COSTS AFTER PAYMENT. — SPECIAL CIRCUMSTANCES.

Where a solicitor had given his client the opportunity of obtaining a taxation of his bills of costs before settlement, held, that after their subsequent payment a taxation could not be obtained, where the overcharges alleged did not amount to fraud, and he had, besides, the assistance of another solicitor.

THIS was an appeal from the decision of Vice-Chancellor Stuart, directing the taxation of the bills of costs of Mr. Charles Boyle, notwithstanding payment. It appeared that Mr. Boyle had acted as Mr. Turner's solicitor in the purchase of an estate, and in obtaining a mortgage loan, and that on August 12, 1853, the bill of costs in respect thereof was delivered, and security given for the amount due, including certain advances, and on August 25, the mortgage was transferred, with the concurrence of Mr. Turner, to a third party, and on October 25, the balance due to Mr. Turner was paid. Various other transactions took place. Disputes afterwards arose as to the bills of costs in respect thereof, and on Feb. 6, 1854, Mr. Boyle wrote to Mr. Turner, who had retained another solicitor, informing him that he would consent to have the settlement postponed for a taxation, and that it would be difficult to obtain a taxation after payment. The business was completed on February 25, and on March 8, the bill was paid out of the moneys raised by mortgage. Mr. Turner obtained an order for a taxation on May 17, of the bill of costs.

Malins and Selwyn in support of the appeal; *Bacon and Speed*, contra.

The Lords Justices said, that under the 6 & 7 Vict. c. 73, s. 41,¹ the payment of a bill of

costs precluded a taxation unless under special circumstances, and the question therefore was as to the sufficiency of these circumstances. It appeared that the client had had the offer of an opportunity of obtaining a taxation before the settlement of the bills, and had the assistance of another solicitor. There were no such overcharges in the bill as amounted to fraud, and there should have been no taxation as to the paid bills. The appeal would therefore be allowed.

Master of the Rolls.

Goldney v. Crabbe. June 27, 1853.

WILL.—CONSTRUCTION.—LIFE ESTATE.—SUIT FOR SPECIFIC PERFORMANCE.

A testator by his will, after giving a life estate to his wife in the rents, issues, and annual interests of all his houses and ground rents of houses, being personal property, gave the same from and after her death to his niece, for her separate use during the course of her natural life, subject to an annuity to his brother, and from and after her death to the issue of her body lawfully begotten, and in case she should leave no issue to her husband. The niece survived the testator's widow and brother, and died leaving three children: Held, that the niece had only a life estate.

THE testator by his will, after giving a life estate to his wife in the rents, issues, and annual interests of all his houses and ground rents of houses, being personal property, gave the same from and after her decease to his niece, for her separate use during the course of her natural life, subject to an annuity to his brother, and from and after her death to the issue of her body lawfully begotten, and in case she should leave no issue, then to her husband. It appeared that the niece survived both the testator's widow and his brother, and died in 1851, leaving three children, and her husband afterwards assigned the property to the plaintiffs in trust for sale, and in which assignment the children joined. The defendant, who had purchased at a sale by auction, objected to complete, whereupon this suit for a specific performance was instituted.

¹ Which enacts, that "the payment of any such bill as aforesaid shall in no case preclude the Court or Judge, to whom application shall be made, from referring such bill for taxation, if the special circumstances of the case shall in the opinion of such Court or Judge appear to require the same."

Rossell and Howe for the plaintiffs: *R. Palmer and Whitehead* for the defendant.

The Master of the Rolls said, that the testator's niece only took an estate for life, and that the bill must therefore be dismissed with costs.

Vice-Chancellor Kindersley.

Canning v. Canning. July 29, 1854.

PARTITION OF ESTATE BETWEEN TENANTS IN COMMON.—RETURN OF COMMISSIONERS.

In a partition suit, the Commissioners appointed could not agree as to which of the two tenants in common the several lots of an estate were to be allotted, and they returned separately to that effect: The return was quashed and a new Commission issued, associating a third person with them.

It appeared in this suit for a partition, that the plaintiff and the defendant, who were sisters, were entitled under their father's will to certain property, as tenants in common, and that the commissioners appointed could not agree as to which each respective moiety should be allotted. A return had been made, not signed, to this effect, and a motion was made on July 20 to appoint an indifferent person to draw lots as to the division of the property. His Honour had refused the motion, but without costs, holding that the commissioners should either draw lots or make separate returns, and they had accordingly returned separately, but disagreeing as before.

Baily, Glasse, Freeking, and De Gez, for the several parties.

The Vice-Chancellor said, that the return must be quashed and a new commission issued, directed to the same commissioners, together with another gentleman.

Vice-Chancellor Stuart.

Ferries v. Mullins. July 21, 1854.

BANKING CO-PARTNERSHIP.—DEPOSIT OF DEEDS FOR OVERDRAWINGS.—CUSTODY OF OFFICER.

Upon a banking company agreeing to allow their secretary and solicitor to overdraw his account upon depositing policies of insurance and giving a promissory note and filling up the usual memorandum that the same were securities for the amount, it appeared that he had placed them in a bundle with other bank securities, and had also, upon exceeding the amount in question, added thereto the title-deeds of an estate, and the whole were found together at his death: Held, that the custody of the deeds were in the bank, and that they were entitled to hold them as a security for the balance due from him.

It appeared that the deceased, Mr. Mullins, acted as solicitor and secretary to the Royal British Bank jointly with Mr. Paddison, and

that on his overdrawing his account to the extent of 3,000*l.* he had given a promissory note for the amount and deposited with himself certain policies of insurance, filling up a printed form of memorandum that the same were securities for a sum not exceeding 4,000*l.* It appeared that his overdrawings exceeded that amount, and that he had allowed two of the policies to drop, but he had stated to one of the bank clerks that they held securities beyond the amount of his overdrawings, and on his death it was found that he had deposited in a bundle with the other bank securities the title-deeds of certain property to which he was entitled, but which was mortgaged to the plaintiff. The bank now presented this petition in this administration suit against the widow of the deceased seeking the payment of the amount paid by the insurance companies into Court in part discharge of their debt.

Bacon and F. T. White in support; *Craig and H. F. Bristow* for the defendant; *Speed* for the plaintiff, contra.

The Vice-Chancellor said, that the custody of the deeds, &c., was in the bank, and not in the deceased, and they were therefore entitled to hold all therein as a security for the balance due from their officer.

Vice-Chancellor Wood.

In re Houghton Chapel. July 13, 1854.

APPOINTMENT OF NEW TRUSTEES OF LAND HELD IN TRUSTS FOR WESLEYAN CONGREGATION.

Certain land was conveyed to trustees on trusts, in accordance with the Wesleyan constitution, but the power of appointing new trustees contained in the deed had lapsed: Held, that the new trustees must be appointed under the Charitable Trusts' Act, 1853, and not under the 13 & 14 Vict. c. 28.

It appeared in this case that certain land at Houghton, Lancashire, was conveyed to trustees, on trusts in accordance with the Wesleyan constitution, and that the power of appointing new trustees contained in the deed, had lapsed. A summons at Chambers had accordingly been taken out for the appointment of new trustees, under the Charitable Trusts' Act, 1853, (16 & 17 Vict. 137) upon the certificate of the Commissioners obtained by one of the original trustees, on being advised that the provisions of the 13 & 14 Vict. c. 28, which had been complied with, did not apply. The case now came on by adjournment from Chambers.

Rolt and Little for the trustees; *W. M. James and Cairns* for other parties.

The Vice-Chancellor said, that the 13 & 14 Vict. c. 28 did not apply, and that the appointment under that Act was therefore void. An order for the appointment would accordingly be made upon the certificate of the Commissioners, and a vesting order in them upon an affidavit of their fitness and accepting the office.

The Legal Observer,

AND

SOLICITORS' JOURNAL.

SATURDAY, OCTOBER 21, 1854.

COUNTY COURT FURTHER EXTENSION.

NEW COURT OF APPEAL.—JUDGES' PROMOTION.

It may be proper to direct the attention of our readers to some new propositions for extending the jurisdiction and increasing the importance of the County Courts, which have recently been brought forward. We have been favoured by the perusal of a printed copy of the evidence of Mr. *Willmore*, Q. C., one of the County Court Judges, and looking at the questions put to him, his important position, and the tenour of his answers, it is evident that some, at least, of the Commissioners are not content with the present extent of the jurisdiction of the County Courts, nor with the position of the Judges, but aim at a concurrent, if not an exclusive, jurisdiction in Equity in certain cases, and are desirous of laying a foundation for the promotion of the County Court Judges to the Superior Courts of Westminster. It is well that these ultimate views should be made known to those whom it may concern, and that able and ambitious men at the Bar may see beforehand that a new avenue to the Bench is proposed to be formed, in addition to, if not in substitution of, the present course.

Of the sixty Judges who now occupy the judgment-seats of the County Courts, there is a Queen's Ancient Serjeant, three Queen's Counsel, four Serjeants-at-Law, and a learned Baronet. The dignity of the body is therefore already established, and recollecting that there are upwards of 3,000 men at the Bar, the country has a right to expect that the office of Judge should be filled by lawyers fully competent to discharge the duties required

from them. It appears, however, that Mr. Willmore is of opinion that further inducements are necessary in order to enlist the services of a higher class of men than is at present found in this extensive judicial establishment. He proposes to take two important steps for the purpose of elevating "his order," namely,—1st, to select some of the best of the present Judges to constitute a Court of Appeal, to whom all questions arising in the County Courts should be finally referred, instead of the Judges of the Superior Courts; 2nd, to render the Judges of the County Courts (and particularly we suppose the Appeal Judges), eligible for the Bench of the Superior Courts.

These propositions will, no doubt, be favoured by a considerable number of the Bar. Instead of waiting patiently, and studying assiduously, for several years, to obtain a standing in the great Courts of Westminster, — instead of attending the Sessions, the Assizes, the Courts in Banc and Nisi Prius, the aim will be to procure a local judgeship—thence to become an Appeal Judge, and finally one of the Judges of the land. The business of the "Small Debt" Courts (so called in the Statute constituting them), and the knotty points carried by appeal to the Court above, it is assumed will in due time fit the aspiring lawyer to take the place of a Parke, Patteson, or Coleridge! Probably the accustomed promotion of the Attorney and Solicitor-General to the chiefships of the Superior Courts, will not be intruded upon; and we may still expect that Sir Alexander Cockburn and Sir Richard Bethell, or their successors, will not be superseded by any local Judges, however they may have shone forth either in their respective Circuits or in their appellate jurisdiction.

Let us, however, hear Mr. Willmore's arguments in support of the change:—

"As to the means of creating a Court of Appeal, it has occurred to me (he says) that such a Court might be formed from the body of County Court Judges themselves. I think that, disparage the body as much as its greatest enemies may, it cannot be said that six or eight might not be found in whom the public would have confidence; and I think they might be nominated to form a Court in Banc as I may call it, the members to sit in rota. I would not relieve any of them from their present Circuit duty; nor do I think there would be any necessity for it, because they might arrange among themselves always to have a Court in existence so long as there is any business to be done, without interfering with the Circuits."

Being asked whether he would make the decision of the County Court Judges sitting in Banc final, he answers,

"Final. I think that such a Court would be good in various other ways besides the actual discharge of the business that would come before it. I think there is great mischief in the assumption that when a man is made a County Court Judge, he never can be anything else. I think if the reverse were assumed, if the appointment as County Court Judge were not considered a bar to a man's professional advancement, you would have better men candidates for the office. You would have the whole body of talent in the Profession willing to go through the previous state of probation, as it would then be, of a County Court Judgeship. You would have the quality of the County Court Judges prodigiously improved, both by the character of the men that would accept the office and by the strong stimulus they would constantly have to keep themselves fit for the execution of their duties while remaining in that position."

He is then asked whether he would recommend that those County Court Judges, who were members of the Court of Appeal, should have a higher amount of remuneration than others. And he responds—

"Certainly, some species of higher rank, and greater remuneration. The subject of remuneration is a delicate one; but I say, without hesitation, that the present scale of remuneration is too low, especially if the appointment of County Court Judge is to be considered as a bar to future preferment. The present is a state of transition and uncertainty in the Profession, and therefore there is now a greater facility in finding good men, who were bred up for something better, to accept the appointment. Certainly hereafter you may sometimes, by accident, catch good men, whom circumstances prevent from struggling on for the higher prizes. But in this country, where the rate of remuneration is so much higher, in commerce, public officers, managerships to banks, rail-

ways, &c., you must not expect a permanent succession of able, conscientious men, competently trained and educated for such an appointment, if it is to be a final one, at the present pay. The County Court Judge, too, especially in the provinces, is placed in a painful and false position. He is made a magistrate, and must associate with his brother justices. If he lives at all as they do, he perhaps spends more than he can afford; he certainly can lay up nothing for his family. If he does not, he will probably meet with slights and disparagement, to which, I think, he ought not to be subjected, and which impairs his efficiency."

Mr. Willmore is then asked whether he would advise that the other County Court Judges should, as vacancies occurred, be appointed members of the Court in Banc¹ according to circumstances. He says—

"Yes; if such a system were adopted, that the public would derive another advantage in not being obliged to take as a Judge of the Superior Courts a purely untried man; they would have a man exercised both in Nisi Prius and in Banc work, and exercised in the face of the Public and the Profession, instead of having a man taken because he has a certain standing as an advocate, or because he has certain political recommendations. I think it would be a much more certain mode of testing the merits of a man previous to his appointment as a Judge in the Superior Courts."

The Chairman says "you think it would have the effect of stimulating the sixty men to do their best?" And the witness replies—

"Not only that, but you would get better men among the sixty to begin with, if they thought it was the road to a higher branch of the Profession, instead of operating as a bar or a shelf. No one would refuse the office, because it would be the best mode of qualifying one's self for subsequent promotion. You would have better men among the sixty, and you would have those sixty cultivating their ability to the best of their power, with the view of afterwards attaining a higher position."

Mr. Willmore further notices the difference, which he considers very material, between the attainments required by a provincial County Court Judge and a metropolitan one. He says—

"I think, as regards a provincial judge, it is as much, if not more, necessary, that he should be a man of ability than the metropolitan one. In the first place, I think that the character of the questions which come before him are more varied, more intricate, and more important

¹ The Commissioners' question meant, no doubt, the County Court *banc*, not the Superior Court; but the witness understood it differently.

than those that come before the Judge of the metropolitan Courts; and for this reason, the London attorney being on the spot, and generally unwilling either to attend in the County Court himself or to hand over his client to another attorney, tries all the cases that he can in the Superior Courts; on the other hand, the country attorney must either go up to town, leaving his own office, or trust to his agent, and give him half the profits, when he tries cases in the Superior Courts. The tendency, therefore, is for the country attorney to try all that he can in the County Courts,—for the London attorney to try all that he can in the Superior Courts. In the next place, I think what the provincial Judge says and does is more the subject of general observation, and it is perhaps, therefore, more expedient to appoint a man who can maintain a satisfactory reputation than in the case of a metropolitan Judge. In the country, all the world knows what is done in the County Court; all is put into the newspapers, and occupies a prominent place there. A provincial Judge mixes with the magistrates, and everybody knows everything about him. I think, therefore, that the standard for a provincial Judge, ought, to say the least of it, to be as high as for a metropolitan Judge. Then, again, the provincial Judge has no access to legal libraries; he may have something of the sort at his own residence, but when he is occupied in the discharge of his duties, he has no immediate access even to that, nor has he the facility of conference with his brother Judges or any professional men which a metropolitan Judge possesses; so that it is absolutely necessary he should have in readiness not a small amount of information and intelligence. His resources must be within himself. I think it only fair towards those gentlemen who fill the office of provincial Judge, that these circumstances should be stated, and I think they show that the position of a metropolitan Judge cannot properly be made a kind of promotion."

We leave these suggestions to the consideration of the Metropolitan Bar. We shall marvel if the proposed new road to the high places in Westminster Hall be approved.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts of the present Session printed in the present Volume, with an Analysis to each, will be found at the following pages:—

Income Tax, cc. 17, 24, pp. 46, 134, *ante*.

Commons' Inclosure, c. 9, p. 64.

County Court Extension, c. 16, p. 121.

Registration of Bills of Sale, c. 36, p. 216.

Warwick Assizes, c. 35, p. 218.

Attendance of Witnesses, c. 34, p. 235.

Evidence in Ecclesiastical Courts, c. 47, p. 254.

Commons' Inclosure (No. 2), c. 48, p. 254.

Cruelty to Animals, c. 60, p. 275.

Ecclesiastical Jurisdiction, c. 65, p. 276.

Highway Rates, c. 52, p. 276.

Turnpike Trusts' Arrangements, c. 51, p. 276.

Admiralty Court, c. 78, p. 295.

Borough Rates, c. 71, p. 298.

Acknowledgment of Decds by Married Women, c. 75, p. 299.

Stamp Duties, c. 83, p. 317.

Court of Chancery, c. 100, p. 334.

Bankruptcy, c. 119, p. 335.

Real Estate Charges, c. 113, p. 339.

Common Law Procedure Act, 1854, c. 125, pp. 356, 376.

Usury Laws Repeal, c. 90, p. 396.

Bribery Act, c. 102, pp. 397, 415.

Youthful Offenders, c. 86, p. 418.

Court of Chancery, County Palatine of Lancaster, c. 82, p. 438.

Metropolitan Sewers' Act, c. 111, p. 450.

PRISONERS REMOVAL.

17 & 18 VICT. c. 115.

If common gaol be adopted for reception of debtors as a class, they may be removed thereto; s. 1.

No such removal to take place till after certificate by inspector of prisons; s. 2.

After such removal debtors may be sent to such gaol; s. 3.

Where governor of common gaol appointed by other authority than sheriff, it shall be lawful for him to give security; s. 4.

Sheriff not relieved from present obligations; s. 5.

Present powers for disposing of unnecessary prisons not disturbed; s. 6.

Allowances to keepers of gaols to be continued where superseded by this Act; s. 7.

The following are the Title and Sections of the Act:—

An Act to amend the Law relative to the Removal of Prisoners in Custody.

[11th August, 1854.]

Whereas by the several Acts of Parliament made and passed for regulating gaols and houses of correction in England, Wales, and Ireland, and for the better ordering of prisoners, provision is made for the custody and treatment of debtors as one of the classes of prisoners to be confined therein: and whereas in some counties prisoners for debt and for

contempt of Court are confined in separate prisons not being gaols within the meaning of the said Acts for regulating gaols and houses of correction and for better ordering of prisons, and doubts have arisen whether such prisoners for debt and contempt of Court may be lawfully removed to and confined in such last-mentioned gaols, and it is expedient that such doubts should be removed, and that the powers given by law for the removal of prisoners in custody should be enlarged and rendered more generally applicable; be it therefore enacted, as follows:—

1. From and after the passing of this Act, when the common gaol for any county in England, Wales, or Ireland shall be adapted for debtors as a class of prisoners to be confined therein, it shall be lawful for the sheriff of such county, or any other person having custody of persons for debt within any county, to remove to such common gaol all prisoners in his custody for debt or contempt of Court from any prison in which they may be confined, and such common gaol shall be deemed the legal place of custody for such debtors, and no such removal shall be deemed or taken to be an escape.

2. Provided always, that no such removal shall take place until one of her Majesty's inspectors of prisons, acting for the county in which such common gaol is situate, on the application of her Majesty's justices of the peace for such county in quarter sessions assembled, shall have signed and transmitted to the clerk of the peace for the said county a certificate in the form or to the effect in the schedule to this

Act annexed, nor until one of her Majesty's Principal Secretaries of State or the Chief Secretary for Ireland shall, by warrant under his hand, direct and authorise such removal.

3. From and after such removal as aforesaid, it shall be lawful for the sheriff of the county to send to and confine in such common gaol all future prisoners for debt or for contempt of Court, which common gaol shall be deemed the legal place for their confinement, any local act or usage to the contrary notwithstanding.

4. And whereas in some counties in England and Wales the keeper or governor of the common gaol is by usage or under some legal authority appointed by the justices in quarter session assembled, and in Ireland by boards of superintendence and not by the sheriff: be it enacted, that in all cases in which the keeper of any common gaol (in which debtors are or under this Act may be confined) shall be appointed by any authority other than that of the sheriff, it shall and may be lawful for the keeper so appointed to give security by bond or otherwise to the sheriff for the time being for the safe keeping of all such debtors as may be placed in his custody, and such bond or other security may be made and given to such sheriff for the time being, and shall and may be prosecuted by such sheriff in case of default of such keeper.

5. Provided nevertheless, that, except as

aforesaid, nothing herein contained shall tend to relieve the sheriff of any county from the duty of keeping the common gaol in the same manner as is now by law required from him.

6. All the powers and provisions of the several Acts of Parliament in force authorising the disposal of unnecessary prisons shall and may be exercised and applied for the sale and disposition of any prison rendered unnecessary by this Act having been carried into effect in any county, in the same manner as if such last-mentioned prison were a gaol or prison within the words or meaning of the said several Acts of Parliament or any of them.

7. Whereas by the Act 55 Geo. 3, c. 50, a. 2, the justices of the peace in quarter sessions are authorised to make allowances to certain gaolers by way of compensation for fees abolished by that Act: and whereas by the Act 7 & 8 Vict. c. 96, a. 70, it is enacted, that every keeper or other officer of any debtors' prison whose emoluments should be diminished by that Act might make claim for compensation, and the Commissioners of her Majesty's Treasury were thereby authorised to award a gross or yearly sum in respect thereof: be it enacted, that the justices of the peace assembled in quarter sessions may order and direct that the allowance (or such part thereof as they may think fit) hitherto made to the keeper of any gaol which may become unnecessary by virtue of the provisions of this Act may be continued for and during the life of such keeper, and the Commissioners of her Majesty's Treasury may continue the allowance (or such part thereof as they may think fit) hitherto made to the keeper of any such gaol for and during the life of such keeper.

SCHEDULE.

Form of Certificate.

I hereby certify, that I have inspected
The new common gaol }
or
The alterations and additions made to the } of the county of
common gaol }

and particularly that portion of the building which it is proposed to appropriate for the custody of debtors; and I further certify, that the same is in a fit and proper state for the reception of such prisoners as are or may be confined in prison for debt or contempt of Court within the jurisdiction of the sheriff of the said county.

NOTICES OF NEW BOOKS.

The Common Law Procedure Act, 1854, (17 & 18 Vict. c. 125,) with Practical Notes: an Introduction, explaining the nature and extent of the Equitable Jurisdiction conferred on the Superior Courts of Common Law; the Changes effected in the Law of Evidence; and the Atte-

rations in Practice introduced by the Statute: and a Copious Index. By ROBERT MALCOLM KERR, Barrister-at-Law. London: Butterworths. 1854.

Mr. Kerr, in his introductory dissertation, has arranged and classified the principal parts of this important Statute under ten chapters. He treats

1st. Of *Specific performance*, comprising the prerogative writ of mandamus and an action to obtain a mandamus.

2nd. Of *Injunction*, and proceedings in the action.

3rd. Of *Discovery*, and herein of the discovery of documents, by interrogatories, by oral examination, and by the inspection of premises and chattels.

4th. Of *Equitable defences*.

5th. Of proceedings *on the Trial* before the Court or a Judge;—compulsory reference to arbitration;—amendments in the Law of Arbitration;—trial by jury;—and adjournment of the trial.

6th. Of proceedings *after the Trial*; special cases; motions for new trials, &c.;—and proceedings on appeals.

7th. Of *Execution by the attachment of debts*; and proceedings against the garnishee.

8th. Of *Summary proceedings* in Court, by affidavits and the examination of unwilling witnesses.

9th. Of the alterations in the Law of *Evidence*:—affirmations instead of oaths;—discrediting witnesses;—proof of contradictory statements;—cross-examination as to previous statements;—proof of previous conviction of a witness;—attesting witnesses;—comparison of disputed handwriting; stamp duties.

10th. Of *Amendments in the Procedure* of the Superior Courts;—new trials;—revivor;—abatement;—ejectment;—execution.

We are thus presented with an excellent outline of the various changes introduced by the Statute; and the enactments are set forth *in extenso*,—accompanied by full and numerous notes, which will essentially aid the practitioner in carrying the Act into effect.

In his Preface, the Author states that—

“In pointing out in the first four chapters the nature of that extension of jurisdiction, which is the most prominent feature of the Act, my object has been to explain, as well the reasons which led to, as the extent of, the powers now conferred on the Superior Courts of Common Law. For while the performance of contracts and duties, which these Courts may now

compel, is not so extensive as the specific performance which may be decreed by a Court of Equity, the discovery they may obtain for a suitor seems to be practically as unlimited. The repetition of wrongful acts arising out of a breach of contract may be restrained; but an injunction cannot yet be obtained in Courts of Law, in the many cases of threatened injury and doubtful legal right, in which the Court of Chancery at once interferes; and the Legislature, while it enables a defendant to plead an equitable defence, has thrown a doubt on the propriety of its own act, by a presupposition, that some at least of such defences cannot be dealt with by the Courts, which it has authorized to receive and give effect to them.

“The fifth chapter relates chiefly to the Law of Arbitration, which has been in some respects altered and improved. In this chapter, I have taken the opportunity of mentioning the changes which have been made in the rule of practice, as to the addresses of counsel to the jury. It is difficult to find the reason for confining this alteration in practice to the proceedings before a jury. If the system in operation was objectionable (and the Commissioners state their opinion very strongly that it was so), the change ought to have been extended, like the alteration in the Law of Evidence, ‘in every Court of civil judicature in England and Ireland.’ This has not been done, nor has the change of system been extended to the proceedings on the trial by a Judge without a jury; so that unless the Judges interfere to make the practice uniform, two rules of practice will be in force in Westminster Hall.

“In the sixth and seventh chapters I have attempted an analysis of the proceedings on appeals on motions for a new trial, or to enter a verdict or nonsuit;—of the new process of execution by the attachment of debts;—and of the procedure for the examination of unwilling witnesses.

“The ninth chapter is devoted to a statement of the important alterations, which have been made in the Law of Evidence; and in the last chapter I have called attention to the amendments in existing procedure effected by the Statute.

“A list of ten chapters may excite, not unnaturally, an expectation that the various matters of which they form the subject have been treated fully in detail. Any such expectation must be disappointed, for this division of the subject has been adopted solely with a view to precision and brevity. If ‘a great book is a great evil,’ the evil is most felt in the case of a law book, which I think cannot be too concise consistently with accuracy.

“It is principally to those sections of the Statute which alter, modify, or amend the proceedings in personal actions, that I have appended any notes. The effect of an alteration in the law, as in anything else, may be best learned by considering what the rule was, before the change was introduced. With this view I have stated more fully than in other instances, but I trust usefully, the reasons which have led to

the several amendments in the Law of Evidence, effected by the Statute.

"I need scarcely remind the reader that an edition of so important a measure as 'The Common Law Procedure Act, 1854,' can make no pretensions to be either a treatise on jurisdiction, or a hand-book of practice. Not only is the extent of the jurisdiction, which has been conferred on the Court of Common Law, for book-writing purposes altogether undefined; but much of the procedure, 'for the effectual execution' of the Act, and of 'the intention and object' thereof, has yet to be framed. An outline of changes effected by the Statute, seems as much as can in the circumstances be reasonably expected from an editor."

Mr. Kerr notices a defect in the 88th section of the Act. That section professes to vest in the Superior Courts of Law, or any Judge thereof, the same jurisdiction as may be exercised by the Courts of Equity under the 53 Geo. 3, c. 159.

"Now the Courts of Equity have not, and had not at the time this Act was passed, any jurisdiction whatever under the Statute 53 Geo. 3, c. 159, for that Statute was repealed *in toto* by 'The Merchant Shipping Act, 1854,' passed before 'The Common Law Procedure Act, 1854.' If a strict and literal construction be given, the 88th section is a mere nullity; and, on the other hand, I may add that the intention even, professed by the Legislature in the 88th section, to give the Courts of Law, in certain maritime cases, the same jurisdiction as the Courts of Equity, was not carried into effect by 'The Merchant Shipping Act, 1854,' which vests afresh in the Court of Chancery the jurisdiction it previously had under the 53 Geo. 3, c. 159."

We shall proceed now to lay before our readers the substance of the Author's introductory chapters.

1. In the chapter relating to the "*specific performance of contracts*," which is so new to the jurisdiction of the Common Law Courts, Mr. Kerr observes that—

"This mode of proceeding seems capable of application to every case in which the specific performance of a contract or duty may be enforced; and thus the Superior Courts of Law will have power to grant specific performance, and to enforce the specific delivery of goods in many cases in which that relief has hitherto been granted by Courts of Equity. There are cases in which a Court of Equity decrees a specific performance, though the legal right be not complete at the commencement of the suit. It has not been deemed advisable, however, to interfere with the jurisdiction of these Courts in such cases, but only to give to the Superior Courts of Law the power of enforcing specific performance in the same cases in which compensation in damages can now be

obtained by an action. This new action of mandamus to compel specific performance is not to be confined to the Court of Queen's Bench, and the process, pleadings, and proceedings in it, are nearly the same as in an ordinary action. * * * *

"The pleadings and other proceedings, in an action in which a writ of mandamus is thus claimed, are to be the same in all respects, as nearly as may be, and costs are to be recoverable by either party, as in an ordinary action for the recovery of damages (s. 70).

"Where judgment is given for the plaintiff that a mandamus do issue, the Court in which such judgment is given may, if it shall see fit, besides issuing execution in the ordinary way for the costs and damages, also issue a peremptory writ of mandamus, commanding the defendant forthwith to perform the duty to be enforced (s. 71)."

2. Under the head of "*injunction*," the new remedy is thus described :—

"Accordingly, in all cases of breach of contract or other injury, where the party injured is entitled to maintain and has brought an action, he may claim a writ of injunction against the repetition or continuance of such breach of contract or other injury, or the committal of any breach of contract or injury of a like kind, arising out of the same contract, or relating to the same property or right (s. 97).

"The claim is to be made in the same manner as the claim of a writ of mandamus (s. 79). The writ of summons is to be in the same form as the writ of summons in a personal action, but on the writ and copy must be endorsed a notice, that in default of appearance the plaintiff may, besides proceeding to judgment and execution for damages and costs, apply for and obtain a writ of injunction (s. 80).

"Having thus endorsed his writ, the plaintiff may in his declaration include a claim for damages, or other redress (s. 79). The proceedings in the action are to be the same, as nearly as may be, as the proceedings in an action to maintain a mandamus. Judgment may be given that the writ of injunction do or do not issue as justice may require; and in case of disobedience, the writ of injunction may be enforced by attachment by the Court, or when the Court is not sitting, by a Judge (s. 81).

3. The important sections relating to the *discovery of evidence* and the production of documents, are thus set forth :—

"In all causes, the plaintiff may, with the declaration, and the defendant may, with the plea, or either of them may, at any other time, deliver to the opposite party or his attorney, interrogatories in writing upon any matter as to which discovery may be sought, and require such party within ten days to answer the questions in writing by affidavit to be sworn and filed in the ordinary way (s. 51).

"The leave of the Court or a Judge is a necessary preliminary in all cases; and in the

case of a body corporate being the party to be interrogated, any of the officers may be required to answer the interrogatories (s. 51).

"The application for the order allowing interrogatories to be delivered, must be made upon an affidavit of the party proposing to interrogate, and his attorney or agent, stating that the deponents believe that the party proposing to interrogate will derive material benefit in the cause from the discovery which he seeks; that there is a good cause of action or defence, as the case may be, upon the merits; and, if the application be made on the part of the defendant, that the discovery is not sought for the purpose of delay (s. 52). If, from unavoidable circumstances, the plaintiff or defendant cannot join in the affidavit, the Court or a Judge may, upon affidavit of the circumstances by which the party is prevented from so joining therein, allow the interrogatories to be delivered without the affidavit (s. 52). If the party seeking discovery is a body corporate, the affidavit is to be made by their attorney or agent (s. 52).

"Finally, any person omitting, without just cause, sufficiently to answer all questions as to which a discovery is sought, will be deemed to have committed a contempt of the Court, and be liable to be proceeded against accordingly (s. 51). The time for answering the interrogatories may be extended by order of the Court or a Judge."

An oral examination of the parties may also be obtained before trial, and an inspection of the premises or matters in question by the jury and witnesses.

4. We come next to "*equitable defences*," on which the learned Editor remarks that—

"The Common Law Commissioners recommended that these Courts should be empowered to receive equitable defences by way of plea in every case in which the party pleading them would be entitled to relief in Equity; and that in cases where such relief in a Court of Equity would be conditional or discretionary, the Courts of Law should have power to give, in a summary way, the same relief against actions pending therein, as might be obtained by resorting to the Court of Chancery. The Legislature has not, however, conceded to the Courts of Law, the summary jurisdiction proposed to be conferred on them, nor has it enabled these Courts to repeal in all cases inequitable defences, as, for instance, in ejectment, an outstanding legal estate held in trust for the plaintiff. In this action, no doubt, the names of the trustees who are possessed of the term may be inserted as claimants in the writ; and they may thus recover possession of the premises for the real claimant. One very inequitable defence, however, can no longer be set up; for it is specially provided, that in any action on a bill of exchange or other negotiable instrument, the Court or a Judge may order that the loss of the instrument shall not be set up, provided an indemnity be given against the claims of any other person upon such instrument (s. 87).

"Although, however, Parliament has not seen fit to carry out to the fullest extent the recommendations of the Commissioners, it has conferred on the Courts of Common Law a most extensive equitable jurisdiction.

"The defendant (or plaintiff in replevin) in any cause in any of the Superior Courts in which, if judgment were obtained, he would be entitled to relief against such judgment on equitable grounds, may now plead the facts which entitle him to such relief by way of defence (s. 83); and the plaintiff may in like manner reply, in answer to any plea of the defendant, facts which avoid such plea upon equitable grounds (s. 85).¹

"In case, however, it appears that any such equitable plea or equitable replication cannot be dealt with by a Court of Law so as to do justice between the parties, the Court or a Judge may order the same to be struck out, on such terms as to costs and otherwise, as to such Court or Judge may seem reasonable (s. 86).

5. In regard to the alterations effected in a trial before the Court or a Judge, the following is Mr. Kerr's summary:—

"Trial by jury will continue to be the rule, but the jury may in some cases be dispensed with; for the parties to any cause may, by consent in writing, leave the decision of any issue of fact to the Court, provided the Court, upon a rule to show cause, or a judge on summons, in their or his discretion think fit to allow such trial (s. 1).

"The parties must obtain the consent of the Court or a Judge, in order to have an issue of fact tried by the Court; but the Judges are authorised to make a general rule or order dispensing with the necessity of such allowance, either in all cases or in any particular class or classes of cases which may be defined in such rule or order (s. 1).

"A rule or order having been obtained for the particular cause, or the cause itself being one within any general rule or order issued by the Judges on virtue of the authority thus given to them, the issues of fact may be tried and determined, and damages assessed where necessary, in open Court, either in Term or Vacation, by any Judge who might otherwise have presided at the trial thereof by jury (s. 1).

"The proceedings upon and after the trial, as to the power of the Court or Judge, the evidence, and otherwise, are to be the same as in the case of trial by jury; and the verdict of the Judge will be of the same effect as the verdict of a jury. It is expressly provided, however, that it shall not be questioned upon the ground of its being against the weight of evidence (s. 1).

¹ "Any such matter which, if it arose before or during the time of pleading, would be an answer to the action by way of plea, may, if it arise after the lapse of the period during which it could be pleaded, be set up by way of *avoué* *querelâ* (s. 82).

"Where the issues of fact are left to the Court, they need not necessarily be tried by a single Judge. They may be tried by the Judge, who would otherwise preside at the trial thereof by a jury, either with or without the assistance of any other Judge or Judges of the same Court; or if the cause be a country cause, with or without the assistance of the other Judge included in the commission of *nisi prius* (s. 1).

"In order to give increased facilities for the trial of causes in Westminster and London, any one of the Judges of any of the Courts may, at the request of the Chief Justice or Chief Baron, try the causes entered for trial in either of the Courts, on the same days on which the Chief Justice or Chief Baron, or any other Judge of the same Court, may be sitting to try causes, so that the trial of two causes may be proceeded with at the same time (s. 2). The trial of every cause before such other Judge may, if necessary, be entered of record, as having been had before the Judge by whom such cause in fact was tried (s. 2)."

There need no more complaints, as Mr. Kerr observes, of delay in the Superior Courts. Trials may take place at any time whether in Term or Vacation.

The enactments relating to *compulsory references* to arbitration are comprised in 14 sections, and the effect of several of them is thus summed up by our Author:—

"If at any time after the issuing of the writ, it be made to appear, by either party, that the matter in dispute consists wholly or in part of matters of mere account, the Court or a Judge may either decide such matter in a summary manner, or order that it be referred, either wholly or in part, to an arbitrator appointed by the parties, or to an officer of the Court, or, in country causes, to a Judge of the County Court (s. 3). The decision of the Court or the order of the Judge, if the matter be disposed of summarily by either, or the award or certificate of the referee is to be enforceable by the same process, as the finding of a jury upon the matter referred (s. 3).

"Cases involving matters of account may not, however, be referred *before* the trial. It may be that at the trial only will the case appear to be one of account. If the cause be tried by a Judge with the assistance of a jury, it would seem doubtful whether it can (unless with consent), be withdrawn from the jury by the Judge, and either disposed of summarily or referred (s. 3).

"If, however, the cause be tried by a Judge without a jury, it is specially provided that he may order any matter of account which may arise to be referred to,—an arbitrator appointed by the parties, or—to an officer of the Court, or,—in country causes, to the Judge of a County Court,—whose award or certificate is to have the same effect as the award or certificate of a referee *before* trial (s. 6). The reference at the trial need not necessarily be of all

the matters in dispute between the parties. If not so, the Judge may proceed to try and dispose of any other matters in question, not referred, in like manner as if no reference had been made (s. 6).

"But questions of law as well as questions of fact, may, and do constantly arise out of mere matters of account. This contingency is provided for. If it appear that the allowance or disallowance of any particular item depends upon a question of *law* fit to be decided by the Court, the Judge in directing the matter to be referred, may direct a case to be stated for the opinion of the Court, whose decision is to be taken and acted upon by the arbitrator as conclusive (s. 4). So if the allowance or disallowance of an item depends on a question of *fact*, fit to be decided by a jury or by a Judge alone without a jury, an issue may be directed to be tried either by a jury or by a Judge; and the finding of the jury or of the Judge is to be taken by the arbitrator as conclusive (s. 4).

"The proceedings upon this arbitration, except when otherwise directed by the Statute itself, are to be conducted in like manner, and subject to the same rules and enactments, as to the power of the arbitrator and of the Court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, and otherwise, as have hitherto been the proceedings upon a reference under a rule of Court or Judge's order (s. 7).

"In any case where a reference is made to arbitration, in any of the modes I have pointed out, the Court, or a Judge, may, at any time, remit the matters referred to the reconsideration and redetermination of the arbitrator (s. 8). But the arbitrator may now, if he thinks fit, state his award in the form of a special case, for the opinion of the Court, and judgment may be entered accordingly (s. 5).

"The application to set aside the award on a compulsory reference must be made within the first seven days of the Term following the publication of the award. If no such application is made, or no rule is granted, or a rule granted is afterwards discharged, the award is to be final (s. 9). But that there may be no delay in the successful party's obtaining the fruits of the award in his favour, it is provided that an award made on a compulsory reference may, by the authority of a Judge, be enforced at any time, after seven days from the time of publication, notwithstanding that the time for moving to set it aside has not elapsed (s. 10)."

Referring to the work for the explanation of the other sections on the subject of arbitration, we must now advert to the changes which are to take place at the trial, and particularly regarding the addresses of counsel to the jury.

"Henceforth, upon the trial of any cause, the addresses to the jury are to be regulated as follows: the party who begins, or his counsel, is to be allowed, in the event of his opponent not announcing at the close of the case of the

party who begins, his intention to adduce evidence, to address the jury a second time at the close of such case, for the purpose of summing up the evidence. The party on the other side, or his counsel, is to be allowed to open the case, and also to sum up the evidence (if any); and the right to reply is to be the same as at present" (s. 18).

As to the *adjournment* of a trial, it is now provided that—

"The Court or the Judge at the trial of any cause, where they or he may deem it right for the purpose of justice, may order an adjournment for such time, and subject to such terms and conditions as to costs and otherwise, as they or he may think fit (s. 19).

"It will be recollected that the sitting of the Court or of a Judge for the trial of issues in fact, need not be confined to the sittings in and after Term. Sittings may be appointed for any time in Term or Vacation, not being between the 10th of August and the 24th of Oct. (s. 93); and the Courts, or any Judge, may make such orders as are necessary for the attendance of the jury at such time and place and in such manner as they or he may think fit" (s. 59).

6. In the chapter on proceedings *after the trial*, we have the following exposition of the new law as to special cases :—

"There has hitherto existed a great drawback on this mode of proceeding; i. e., that the judgment of the Court on a special case, unlike the judgment on a special verdict, could not be taken to a Court of Error. It is generally on questions of legal difficulty that a special case is resorted to, and parties are naturally unwilling to debar themselves of the opportunity of an appeal against an adverse decision. There seems to be no sufficient reason why a special case should not be placed on the same footing as a special verdict, except where the parties agree to be bound by the decision of the Court.

"Accordingly error may now be brought upon a judgment on a special case, in the same manner as upon a judgment upon a special verdict, unless the parties agree to the contrary (s. 32). The proceedings for bringing a special case before the Court of Error, are to be the same as in the case of a special verdict; and the Court of Error may either affirm the judgment, or give the judgment which ought to have been given in the Court below (s. 32). The Court of Error is required to draw any inferences of fact, from the facts stated in the special case, which the Court where it was originally decided ought to have drawn" (s. 32).

The alterations which have taken place on motions for new trials are thus set forth :—

"When a nonsuit or verdict has been directed by the Judge at the trial, and leave reserved to move to enter a verdict or nonsuit,

the rule, when moved for, is either refused at once, or, if granted, is a rule nisi, which, on cause being shown, is discharged or made absolute. Hitherto, as we have seen, the decision of the Court has been final; but now in all cases of rules to enter a verdict or nonsuit upon a point reserved at the trial, if the rule to show cause be refused;—or granted, and then discharged or made absolute, the party decided against may appeal (s. 34).

"The party prejudiced by the ruling of the Judge may always move for a new trial. The decision of the Court in this case was formerly also final. Now, however, in all cases of motions for a new trial, on the ground that the Judge has not ruled according to law," if the rule to show cause be refused, or if granted be then discharged or made absolute, the party decided against may appeal,—provided any one of the Judges dissent from the rule being refused, or, when granted, being discharged or made absolute, as the case may be, or,—

provided the Court in its discretion thinks fit that an appeal should be allowed (s. 35).

"The Exchequer Chamber and the House of Lords are the Courts of Appeal (s. 36); they have power to adjudge payment of costs, to order restitution and to award process (s. 42).

"No appeal is to be allowed unless notice be given in writing to the opposite party or his attorney, and to one of the Masters of the Court, within four days after the decision complained of, or within such further time as may be allowed by the Court or a Judge (s. 37).

"Notice of appeal is to be a stay of execution, provided bail to pay the sum recovered and costs, or to pay costs where the appellant was plaintiff below, be given, in like manner and to the same amount as bail in error, within eight days after the decision complained of, or before execution delivered to the sheriff (s. 38).

"The appeal is to be upon a case to be stated by the parties, in which is to be set forth so much of the pleadings, evidence, and the ruling or judgment objected to, as is necessary to raise the question for the decision of the Court of Appeal (s. 39). In case of difference between the parties, the case is to be settled by the Court, or a Judge of the Court appealed from.

"The Court of Appeal is to give such judgment as ought to have been given in the Court below (s. 41). When the appeal is from the refusal of the Court below to grant a rule to show cause, and the Court of Appeal grants such rule, the rule is to be argued and disposed of in the Court of Appeal (s. 40). Further proceedings in the action are to be taken upon

"Where the application for a new trial is upon matters of discretion only, as on the ground that the verdict was against the weight of evidence or otherwise, no appeal is to be allowed (s. 35)."

the judgment of the Court of Appeal, as if that judgment had been given by the Court in which the record originated" (s. 41).

We must reserve the consideration of the proceedings to execution by the attachment of debts,—the mode of proceeding on summary applications to the Court,—the changes in the Law of Evidence,—and the amendments in the procedure of the Courts.

NECESSITY OF CONSOLIDATING THE STAMP ACTS.

THE accumulation of patched and contradictory enactments consequent upon repeated alteration in the stamp duties, renders consolidation absolutely necessary. There are, at the present time, no less than five Acts, to which constant reference is required.

The duty payable on an *appointment* is to be sought for in the Act of 1815,—on a *mortgage* in the Act of 1850,—on an *apprenticeship* indenture in an Act of 1853,—on *articles of clerkship* in another Act of the same year,—and, finally, on *conveyances* upon *chief rent* and on certain descriptions of *leases* in the Act of the present year. And though the duties ordinarily payable are comprised in the five Acts above-mentioned, the directions and regulations to be observed, and the penalties by which those directions and regulations are enforced, are scattered, here a little, and there a little, through a multitude of Statutes, which, but for the formidable list of them, occupying pages 853, 854, 855, 856, 857, and 858 of Mr. Tilsey's Treatise, I should have felt no hesitation in pronouncing to be innumerable. Indeed, it may fearlessly be affirmed, that of these statutory regulations, *as such*, save as regards a few of everyday application, legal practitioners are wholly ignorant, and are only saved from the consequences of disobedience by a cautious adherence to the traditional course of practice in which the spirit of the statutory rules is preserved.

But, to return to the Acts with which I set out:—As regards the stamping of newly prepared instruments, experience may enable the practitioner, in any ordinary case, to turn up readily the proper Act and the precise part of it where he may learn the duty he has to pay; but if an instrument out of the common course should come before him, or if a question of exemption from duty should occur, even the tried and experienced lawyer soon finds

that he is wandering in a labyrinth without a clue. Still more unfortunate is the practitioner who is called to investigate a title. He may be master of the law current in his own day, but, for the purpose in hand, this may avail him nothing. Every deed must stand or fall by the laws in force when it first saw the light; and, to qualify the conveyancer for his task, he must be as familiar with the laws of that particular era of stamp legislation to which the instrument under consideration belongs, as with the most recent phase of the law. It may happen, therefore, that in perusing an abstract going back but a very few years, the conveyancer may have occasion to display an acquaintance with four or five distinct codes.

This state of things is really too bad. It is surely enough for Government to levy contributions upon our pockets, without taxing so unmercifully our time and tempers. I repeat that *consolidation has become absolutely necessary*. It is a debt due to the country, and an effort is all that is wanting to discharge it. One short section, formed on the model of that which repeals the Usury Laws, would suffice to sweep away the long list of Statutes and "all existing Laws relating to Stamp Duties." Another section, equally short, might render reference to the past unnecessary by declaring that every existing instrument bearing any stamp should be deemed to be duly stamped. The rubbish of two hundred years being thus cleared away, it would not, one would think, be difficult, by the help of past experience, to reconstruct the law in a shape at once compact and intelligible,—a result of which I should be the more hopeful if the draftsmen would condescend to submit their work to public criticism a few weeks before asking for it the sanction of Parliament. Without this precaution, we could look for nothing better than a repetition of the egregious blunders which have marked every recent effort at stamp legislation.

It would be ridiculous, however, to expect Government to take the initiative. A little wholesome pressure must be applied from without. Let the Law Societies, then,—particularly let the Incorporated Law Society—take the matter up. Let them give the Chancellor of the Exchequer no rest till he accede to what even a Chancellor of the Exchequer must admit to be a reasonable request.

A SOLICITOR.

Manchester 13th Oct., 1854.

LAW OF ATTORNEYS.

SOLICITOR AND CLIENT.—LIABILITY OF SEPARATE ESTATE OF MARRIED WOMAN.

MR. PUGH, a Solicitor, who had been employed by a married woman in relation to her separate estate, was instructed in writing by her and her children, in 1852, to take proceedings respecting certain property claimed by the children, but she was neither interested in nor a party to the suits, and Mr. Pugh proceeded in the name of the children alone by their next friend.

On a petition for the usual order for a taxation, the *Master of the Rolls* said,—“The opposition is founded on a misconception of the rights and obligations attaching to the separate estate of a married woman. In *Murray v. Barlee*, 4 Sim. 82, 3 Myl. & K. 209, a married woman, in respect of her separate estate, employed a solicitor to conduct the proceedings, and it was held that her separate estate was made liable. That is no authority for creating a liability for costs in this case. Here, a married woman, whose husband, by reason of mental incapacity, was unable to take any steps, goes to a solicitor and directs him to take proceedings for her children. It is a separate and distinct matter. She was not a party to the cause, and the litigation had no relation to her or her separate estate: it was instituted merely to ascertain the rights of her children. From the situation of her husband, she was the person who naturally communicated with the solicitor, and in one sense employed him, but he knew that he was employed to protect the interests of the children, and that the next friend was liable to him; but neither the mother of the children, nor her separate estate, was liable for costs incurred in this matter, which did not concern her. I make the usual order for taxation.

“Mr. Pugh, showing by his own affidavits that he would have opposed the common order, must pay the costs of this special petition.” *In re Pugh*, 17 Beav. 336.

LAW OF COSTS.

LIABILITY OF NEXT OF KIN TO COSTS OF ADMINISTRATION SUIT.

AN administrator settled with three out of four next of kin, and the fourth having instituted a suit for administration, held that his share was only liable to one-fourth of the costs. *Holgate v. Haworth*, 17 Beav. 259.

ON SPECIAL CASE, HOW PAYABLE.

On a special case, the costs follow the same rule as in administration suits, and are payable out of the general residue; and if there be none, out of the property specifically bequeathed. *Cookson v. Bingham*, 17 Beav. 262.

MICHAELMAS TERM. EXAMINATION.

THE Examiners appointed for the examination of persons applying to be admitted Attorneys, have appointed *Tuesday*, the 14th Nov., at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, to take the examination.

The Articles of Clerkship and Assignment, if any, with answers to the questions as to due service, according to the regulations approved by the Judges, must be left on or before *Thursday*, the 9th November, with the Secretary.

Where the articles have not expired, but will expire during the Term, the Candidate may be examined conditionally; but the articles must be left within the first seven days of Term, and answers up to that time. If part of the Term has been served with a *Barrister*, *Special Pleader*, or *London Agent*, answers to the questions must be obtained from them, as to the time served with each respectively.

A Paper of Questions will be delivered to each Candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Courts. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each Candidate is required to answer all the Preliminary Questions (No. 1); and also to answer in three of the other heads of inquiry, viz.:—*Common Law*, *Conveyancing*, and *Equity*.

The Examiners will continue the practice of proposing questions in *Bankruptcy* and in *Criminal Law* and *Proceedings before Justices of the Peace* in order that Candidates who may have given their attention to those subjects, may have the advantage of answering such questions, and having the correctness of their answers in those departments taken into consideration in summing up the merit of their General Examination.

Under the new Rules of Hilary Term, 1853, it is provided that every person who shall have given notice of Examination and Admission, and “who shall not have attended to be examined, or not have passed the Examination, or not have been admitted, may within ONE WEEK after the end of the Term for which such notices were given, renew the notices for Examination or Admission for the then next ensuing Term, and so from time to time as he

shall think proper; but shall not be admitted until the last day of the Term, unless otherwise ordered." This rule has been made in order to avoid the practice of giving double notices.

LEGAL OBITUARY.

THIS list comprises the names of solicitors and barristers who died since our former Obituary, page 207, *ante*, including the names received by the Registrar of Attorneys during the present vacation. The names marked thus * were Members of the Incorporated Law Society.

* **Abbott**, Charles Thelwall, Solicitor, of 8, New Inn, Strand (firm Abbott, Jenkins, and Abbott), many years the respected Under-Sheriff of Surrey. Admitted on the Roll Trinity Term, 1807. Died Sept. 9, 1853.

Abbott, John, Solicitor, of 35, Lincoln's Inn Fields and Thames Ditton, Surrey (firm Abbott and Atkinson), aged 51. Admitted on the Roll Easter Term, 1825. Died March 27, 1853.

Adams, Henry, Solicitor, of Portsea, Hants, aged 46. Admitted on the Roll Michaelmas Term, 1828. Died Jan. 3, 1852.

Aglionby, Henry Aglionby, of 5, Brick Court, Temple, and Nuntery, Cumberland, Barrister-at-Law and M.P. for Cocker-mouth, aged 64. He was called to the Bar at Lincoln's Inn, June 28, 1816, and practised as a Special Pleader on the Northern Circuit. He was elected M.P. for Cocker-mouth in 1832. Died July 31, 1854.

Ainley, Samuel Haigh, Solicitor, of Delph, in Saddleworth. Admitted on the Roll Trinity Term, 1822. Died June 29, 1853.

Ainley, John Hobson, Solicitor, of Delph, in Saddleworth. Admitted on the Roll Trinity Term, 1836. Died August 30, 1853.

Allen, William, Solicitor, of New Malton, aged 72. Admitted on the Roll Easter Term, 1807. Died August 14, 1853.

* **Andros**, Thomas, Solicitor, of Guernsey. Died 1853.

Archer, George, Solicitor, of 13, Little James Street, Bedford Row, aged 46. Admitted on the Roll Hilary Term, 1829. Died March 22, 1852.

Armstrong, John, Solicitor, of Carlisle. Admitted on the Roll Hilary Term, 1818. Died July 18, 1853.

Bagster, Joseph, Solicitor, of 2, Walbrook Buildings, Walbrook. Admitted on the Roll Michaelmas Term, 1822. Died April 16, 1853.

Bainson, James Baker, Solicitor, of Beverley. Admitted on the Roll Michaelmas Term, 1829. Died Sept., 1852.

* **Baker**, George Leeks, Solicitor, of 52, Lincoln's Inn Fields, and Hyde Park Square, and Hartley Grange, Hants (firm Baker & Co.), Solicitor to Equitable Gaslight Company. Admitted on the Roll Easter Term, 1820. Died August 30, 1854.

Barker, John, Solicitor, of Bierre House, Bakewell. Admitted on the Roll Hilary Term, 1808. Died 1853.

Barker, Peter, of Hartlepool, Attorney, Notary, and a Perpetual Commissioner, aged 34. He was Mayor of the town. Admitted on the Roll Hilary Term, 1828. Died July 4, 1854.

Barber, Thomas Richard, Solicitor, of Northwich. Admitted on the Roll Trinity Term, 1833. Died Nov. 5, 1852.

Barlow, John, Solicitor, of Manchester. Died Nov. 7, 1853.

Barton, Richard George, Solicitor, of Windsor. Admitted on the Roll Hilary Term, 1819. Died June 1, 1853.

Beardshaw, Thomas, Solicitor, of Worksop. Admitted on the Roll Easter Term, 1809. Died 1853.

* **Beavan**, Henry William, Solicitor, of 2, Adelphi Terrace, Strand. Admitted on the Roll Hilary Term, 1832. Died June, 1852.

Beck, James Osborne, Solicitor, of St. Ives, Hants. Admitted on the Roll Michaelmas Term, 1823. Died Nov. 27, 1853.

Bedford, George, Solicitor, of 13, Cambridge Street, Hyde Park, aged 77. Admitted on the Roll Trinity Term, 1796. Died March 2, 1852.

* **Beever**, Frederick Balders, Solicitor, of 2, Gray's Inn Square (firm Beever, Buckley, and Philbrick), aged 47. Admitted on the Roll Trinity Term, 1827. Died April 30, 1852.

Bellamy, Samuel, Solicitor, of Gainsborough, Lincolnshire, aged 54. Admitted on the Roll Hilary Term, 1830. Died June 5, 1852.

Bellingham, Charles Eudo, Solicitor, of Battle. Admitted on the Roll Trinity Term, 1847. Died Nov. 4, 1853.

Bentley, Samuel Green Beverley, Solicitor, of Huddersfield and Holmfirth, Yorkshire, aged 29 (firm Floyd and Bentley). Admitted on the Roll Easter Term, 1853. Died July 14, 1854.

Bichner, Otto Frederick, of 23, Southampton Buildings, Barrister-at-Law. Called to the Bar at Lincoln's Inn, May 1, 1823. Died June 26, 1854.

Biging, William Keal, Solicitor and a Perpetual Commissioner, of Wincanton, Somersetshire, aged 53. Admitted on the Roll Hilary Term, 1831. Died Aug. 23, 1854.

Birch, Richard William, Solicitor, of Derby aged 65. Admitted on the Roll Trinity Term, 1824. Died Jan. 4, 1852.

Blagg, Francis, Solicitor, of Utttoxeter. Admitted on the Roll Hilary Term, 1827. Died 1853.

Bond, Charles, Solicitor, of Axminster. Admitted on the Roll Trinity Term, 1829. Died Jan., 1853.

Bonner, Charles, Solicitor, of Spalding. Admitted on the Roll Hilary Term, 1803. Died May 20, 1853.

Bowcock, George, Solicitor, of Congleton. Admitted on Roll Michaelmas Term, 1823. Died 1853.

Bowen, Charles Burrin, Solicitor, of Lout-

withiel, Cornwall. Admitted on the Roll Easter Term, 1846. Died May 29, 1854.

**Bower*, Charles Holme, Solicitor, of 46, Chancery Lane, and 22, Parliament Street (firm Bower and Son), aged 29. Admitted on the Roll Michaelmas Term, 1843. Died March 12, 1852.

Bower, Frederick Napier, Solicitor, of Wiveliscombe. Admitted on the Roll Easter Term, 1836. Died 1853.

Bradford, John Willmott, Solicitor, of Langford, near Bristol. Admitted on the Roll Trinity Term, 1821. Died 1853.

Brampton, John, Solicitor, of Worcester, Secretary of the Worcestershire Law Society. Admitted on the Roll Trinity Term, 1824. Died August 23, 1853.

Branson, Thomas Sands, Solicitor, of Sheffield, and Workop. Admitted on the Roll Easter Term, 1846. Died 1853.

**Brown*, Anthony, Solicitor, of Guildhall, Chamberlain of the city of London, previously one of the Aldermen of the City, of the eminent firm of Brown, Marten, and Thomas. Admitted on the Roll Hilary Term, 1802. Died May, 1853.

Browne, Charles, Solicitor, of 3, Lawrence Pountney Hill, City. Admitted on the Roll Easter Term, 1840. Died July 30, 1853.

**Brownley*, John, Solicitor, of 8, New Bell Court. Admitted on the Roll Trinity Term, 1803. Died March, 1853.

Butt, William, Solicitor, of Ryde, Isle of Wight, aged 54. He held the Office of Clerk to the Town Commissioners. Admitted on the Roll Trinity Term, 1820. Died May 29, 1852.

Butterfield, David, Solicitor, of Paignton. Admitted on the Roll Hilary Term, 1844. Died 1853.

Collesdar, Richard Boucher, Solicitor, of Bristol, aged 53. Admitted on the Roll, Michaelmas Term, 1822. Died June 3, 1853.

Charles, Thomas, Solicitor, of Cardigan. Admitted on the Roll Michaelmas Term, 1830. Died 1853.

Chitty, Philip Mathews, Solicitor, of Portsmouth Place, Lincoln's Inn, Shaftesbury, Dorsetshire, and Hendon, Wilts. Admitted on the Roll Trinity Term, 1814. Died June 2, 1852.

**Clarke*, Thomas, of Highgate Hill, Solicitor to the Board of Ordinance, aged 65. He was born July 14, 1789, was admitted on the Roll of Attorneys in Trinity Term, 1810, and was appointed to his official post in 1845. Mr. Clarke's practice, as one of the partners of the firm of Clarke, Fynmore, and Fladgate, in Craven Street, with which he was associated for 30 years, was of the most respectable character; and his strict integrity and disinterestedness secured him the friendship of a large and influential circle, which included many persons of celebrity in literature and art, by whom his taste and acquirements were fully appreciated. He filled the office of President of the Incorporated Law Society for the year 1849-50, having been first elected on the Council in July, 1842. "Mr. Clarke (observes the Editor of the

Gentleman's Magazine) offers an example, which we believe is not so uncommon as the prejudices of the world might lead one to suppose, that an attorney may become wealthy without chicanery; labour to suppress rather than to encourage litigation; and be a firm friend to the unfortunate instead of preying on their necessities." To show the esteem in which he was held, it may be mentioned that he was a Director of the Law Life Assurance Society, the Law Fire Assurance Society, and Secretary of the Lowtonian Club. Died July 15, 1854.

Clarke, William, of Thetford, Solicitor, Perpetual Commissioner, Clerk of the Peace of Thetford Union and of Thetford District County Court. Admitted on the Roll Trinity Term, 1815. Died July 28, 1854.

Colborne, Samuel, Solicitor, of North Broomsham. Admitted on the Roll Michaelmas Term, 1825. Died Dec., 1852.

**Concanen*, George, Solicitor, of 5, Lincoln's Inn Fields (firm Hodgson, Concanen, and Noyes). Admitted on the Roll Michaelmas Term, 1838. Died Oct., 1852.

**Cook*, George Simon, Solicitor, of 18, New Bridge Street Blackfriars (firm Le Blanc and Cook). Admitted on the Roll Michaelmas Term, 1815. Died September 12, 1852.

Cooke, Isaac, Solicitor, of Bristol (firm Cooke and Sons). Admitted on the Roll Michaelmas Term, 1791. Died July, 1852.

Cooke, Thomas Draper, Solicitor, of Spilsby. Admitted on the Roll Hilary Term, 1835. Died March 28, 1853.

Coombs, Thomas, sen., Solicitor, of Dorchester, Dorset (firm Coombs and Son), aged 75. Admitted on the Roll Easter Term, 1803. Died May 13, 1852.

Courteen, Richard, Solicitor, of 17, Paradise Row, Rotherhithe. Admitted on the Roll Hilary Term, 1799. Died 1853.

**Cowburn*, William, Solicitor, of 15, Lincoln's Inn Fields. Admitted on the Roll Michaelmas Term, 1807. Died May 27, 1854.

Cowley, Philip, Solicitor, of Watford. Admitted on the Roll Easter Term, 1797. Died 1853.

Cox, Isaac John, Solicitor, of Honiton, Devon, Town Clerk, aged 38. Admitted on the Roll Hilary Term, 1835. Died April 21, 1852.

Crawford, Samuel, Solicitor, of Leeds. Admitted on the Roll Easter Term, 1845. Died Feb. 10, 1852.

Crickitt, Frederick Stuart, Solicitor, of Petersham and 1, Great St. Helen's, City. Admitted on the Roll Trinity Term, 1850. Died 1853.

**Cross*, James, Solicitor, of 9, Staple Inn, Holborn (firm Pownall and Cross). Admitted on the Roll Easter Term, 1819. Died August, 1853.

**Cruickshank*, Robert, Solicitor, of Gosport. Admitted on the Roll Easter Term, 1806. Died Feb. 13, 1853.

**Crytenden*, William, Solicitor, of Ashford. Admitted on the Roll Trinity Term, 1831. Died Oct. 19, 1852.

Cunah, Edward, Solicitor, of Chester, Rhuanon, and Wrexham. Admitted on the Roll Easter Term, 1834. Died Dec. 9, 1852.

Davenport, William, Solicitor, of Liverpool. Admitted on Roll Trinity Term, 1844. Died 1852.

**Davies*, Benjamin, Solicitor, formerly of 9, Gracechurch Street, then of Upper Sydenham. Admitted on the Roll Michaelmas Term, 1815. Died Dec. 16, 1852.

Davies, John, Solicitor, of Liverpool. Admitted on the Roll Hilary Term, 1806. Died August 30, 1853.

Davis, Thomas, Solicitor, of Gloucester. Admitted on the Roll Hilary Term, 1794. Died 1853.

Deanman, Thomas, Lord, aged 75. Died Sept. 22, 1854. (For Memoir see p. 453, ante.)

Dennis, Charles Henry William, Solicitor, of Camelford. Admitted on Roll Trinity Term, 1850. Died 1853.

Dobie, John, Solicitor, of 2, Raymond Buildings, Gray's Inn (firm Dunn and Dobie). Admitted on the Roll Easter Term, 1833. Died April 23, 1852.

Dovaston, John Freeman Milward, Barrister-at-Law, of Westfelton, near Shrewsbury, Salop, aged 71. He was called to the Bar at the Inner Temple, June 12, 1807. Died August 8, 1854.

Drake, Alfred, Solicitor, of Barnstaple, aged 36. Clerk to the Borough Magistrates and Borough Coroner. Admitted on the Roll Hilary Term, 1836. Died May 2, 1852.

Dyott, John Philip, Solicitor, of Lichfield (firm Dyott and Son). Admitted on the Roll Hilary Term, 1789. Died 1853.

Eales, Richard, Solicitor, of Eastdon, near Dawlish, and of Exeter, aged 92. Clerk of the Peace for Devonshire from 1789. Admitted on the Roll Hilary Term, 1783. Died Feb. 21, 1852.

Eden, Thomas, Solicitor, of 3, Salisbury Street, Strand, and Apha Cottage, Chiswick, and Turnham Green. Admitted on the Roll Easter Term, 1832. Died Sept. 13, 1854.

**Edwards*, Thomas Hans, Solicitor, of Southampton. Admitted on the Roll Trinity Term, 1833. Died July, 1853.

Elswood, Azariah, Solicitor, of Bungay, Suffolk. Admitted on the Roll Hilary Term, 1805. Died July 27, 1852.

Evans, Hugh Robert, Solicitor, late of Ely, aged 88. Admitted on the Common Pleas Roll Trinity Term, 1798. Died July 20, 1852.

Evans, Thomas, Solicitor, of Cardiff, Glamorganshire, aged 45, Clerk to the Magistrates. Admitted on the Roll Hilary Term, 1830. Died May 18, 1852.

Faircloth, William Wickham, Solicitor, of St. Alban's, Herts. Admitted on the Roll Trinity Term, 1829. Died Sept. 27, 1854.

**Farn*, Edward, Solicitor, of 14, Gray's Inn Square (firm Brooksbank and Farn), aged 60. Admitted on the Roll Trinity Term, 1813. Died Feb. 23, 1852.

Faulconer, Robert Hoffman, Solicitor, of

Lewes. Admitted on the Roll Trinity Term, 1834. Died 1853.

Fenton, Thomas, Solicitor, of Newcastle-under-Lyne. Admitted on the Roll Michaelmas Term, 1840. Died March, 1853.

Fisher, William, Solicitor, of 4, Verulam Buildings, Gray's Inn, aged 63. Admitted on the Roll Hilary Term, 1818. Died July 7, 1854.

Flight, Thomas, Solicitor, of Bridport, Dorsetshire, aged 53. Admitted on the Roll Hilary Term, 1835. Died March 18, 1852.

**Forster*, John, Solicitor, late of Carey Street, Lincoln's Inn, and of the firm of Oddie, Forster, and Lumley, aged 88. Admitted on the Roll Easter Term, 1795. Died May 30, 1852.

Foster, Benjamin, Solicitor, of Providence Place, Upper Kennington Lane, Lambeth. Admitted on the Roll Trinity Term, 1849. Died August 3, 1853.

Fox, Henry Burton, Solicitor, of Bridport, Dorsetshire, Clerk to the Guardians to the Union and County Court, aged 33. Admitted on the Roll Trinity Term, 1844. Died Sept. 22, 1854.

Foxcroft, John, Solicitor, of Nottingham, Clerk to Turnpike Roads. Admitted on the Roll Hilary Term, 1829. Died Jan. 26, 1854.

Frampton, John, Solicitor, of Cerne Abbas, Marden, Newton, and Dorchester, one of the Coroners for the County of Dorset, and a Perpetual Commissioner, aged 60. Admitted on the Roll Easter Term, 1818. Died August 7, 1854.

**Freeland*, John Bennett, Solicitor, of Chichester (firm Freeland, Raper, and Johnson), Secretary to the Bishop of Chichester, Deputy Registrar to the Diocese and Clerk to the Dean and Chapter. Admitted on the Roll Michaelmas Term, 1804. Died Oct. 31, 1852.

Gabb, John, Solicitor, of 19, Trafalgar Street, Walworth. Admitted on the Roll Michaelmas Term, 1800. Died 1853.

Gay, Henry, Solicitor, of 6, Pancras Lane, City. Admitted on the Roll Hilary Term, 1834. Died 1853.

Gervis, Henry, Solicitor, of Thorverton, near Exeter. Admitted on the Roll Easter Term, 1819. Died Jan., 1854.

Gibbon, William, Solicitor, of Pembroke. Admitted on the Roll Michaelmas Term, 1830. Died Nov., 1853.

**Gibbon*, William Henley, Solicitor, of 32, Great James Street, Bedford Row, aged 34 (firm Langley and Gibbon). Admitted on the Roll Hilary Term, 1839. Died May 30, 1852.

Goldsmith, George, Solicitor, of Southampton. Admitted on the Roll Michaelmas Term, 1824. Died 1853.

Goodeve, Joseph, Solicitor, of 6, Old Jewry (firm Bevan and Goodeve). Admitted on the Roll Michaelmas Term, 1836. Died June 20, 1853.

Gorham, George Finch, Solicitor, of 57, Lincoln's Inn Fields. Admitted on the Roll Hilary Term, 1851. Died 1853.

Grain, William, Notary Public, of 2, King's

Arms Buildings, Change Alley, Cornhill (firm Grain and Sons), aged 69. Died January 21, 1852.

*Gray, Robert, Solicitor, of 7, New Inn, Strand, and 17, Brompton Crescent, aged 62. Admitted on the Roll Hilary Term, 1816. Died Jan. 9, 1852.

Greaves, John, Solicitor, of Dewsbury. Admitted on the Roll Trinity Term, 1824. Died 1853.

Greaves, Robert Duffin, Solicitor, of Leeds. Admitted on the Roll Hilary Term, 1834. Died May, 1852.

Griffith, George, Solicitor, of Durham. Admitted on the Roll Trinity Term, 1833. Died May, 1852.

Griffiths, Stephen Wells, Solicitor, of Cheltenham. Admitted on the Roll Hilary Term, 1849. Died Sept. 1852.

Grove, James Amphlett, Solicitor, of the Four Ashes, Enville, near Stourbridge, Worcestershire, aged 90. Admitted on the Roll Easter Term, 1789. Died May 26, 1854.

Guy, Henry, Solicitor, late of Ipswich, aged 31. Admitted on the Roll Hilary Term, 1846. Died May 8, 1854.

Hailstone, Samuel, Solicitor, of Bradford, Yorkshire. Admitted on the Roll Trinity Term, 1789. Died 1852.

Haines, James, Solicitor, of Faringdon, Berkshire, aged 66. Admitted on the Roll Easter Term, 1818. Died Sept. 28, 1854.

Hall, Charles, Solicitor, of Uppingham. Admitted on the Roll Trinity Term, 1807. Died October, 1852.

*Hall, John Charles, Solicitor, of 64, Lincoln's Inn Fields (firm Hall & Gibson), aged 46. Admitted on the Roll Michaelmas Term, 1827. Died August 7, 1852.

Hanrott, Henry Augustus, Solicitor, of 29, Queen Square, Bloomsbury. Admitted on the Roll Hilary Term, 1834. Died Oct., 1852.

*Hardwick, Benjamin, Solicitor, of Weavers' Hall, 22, Basinghall Street, Clerk to the Company, and Vestry Clerk of the United Parishes of St. Lawrence, Jewry, and St. Mary Magdalen, Milk Street (firm Hardwick, Davidson, and Bradbury). Admitted on the Roll Michaelmas Term, 1822. Died July 10, 1852.

Harrap, Richard, Solicitor, of Leeds, aged 64. Admitted on the Roll Easter Term, 1811. Died March 27, 1852.

Harris, Thomas, sen., Solicitor, of Kingsbridge. Admitted on the Roll Hilary Term, 1801. Died Feb., 1853.

Hedges, John Allnatt, of Wallingford, Oxfordshire, Solicitor and Town Clerk, aged 67. Admitted on the Roll Hilary Term, 1808. Died August 22, 1854.

Hellings, Thomas, Solicitor, of Tiverton, Town Clerk, Registrar of Court of Record, Clerk to Trustees of Turnpike Roads, Clerk to Charitable Trustees, Treasurer of Borough Fund, and Perpetual Commissioner. Admitted on the Roll Hilary Term, 1796. Died 1853.

Heylin, Richard Featherstonhaugh, Solicitor, of 17, Warwick Street, Regent Street. Ad-

mitted on the Roll Hilary Term, 1847. Died 1853.

Higham, George William, Solicitor, of Brighthouse, near Halifax (firm Higham & Son). Admitted on the Roll Michaelmas Term, 1851. Died June 3, 1853.

Higham, John, Solicitor, of Manchester. Admitted on the Roll Michaelmas Term, 1840. Died 1852.

Hinchliffe, George, Solicitor, of West Bromwich, one of the Coroners for Staffordshire and Worcestershire, Superintendent Registrar of West Bromwich Union, and Perpetual Commissioner (firm Hinchliffe and Son). Admitted on the Roll Hilary Term, 1813. Died August, 1852.

Hitchcock, Samuel Phillips, Solicitor, of Manchester, aged 55 (firm Hitchcock, Buckley, and Tidswell). Admitted on the Roll Michaelmas Term, 1825. Died June 1, 1854.

Hitchin, Ward Dyson, Solicitor, of Halifax. Admitted on the Roll Easter Term, 1821. Died 1853.

LIST OF LOCAL AND PERSONAL ACTS.

17 & 18 VICT.

[Continued from p. 471.]

49. An Act for more effectually paving, lighting, and improving the Town of Abergavenny in the County of Monmouth, for maintaining the Markets within such Town, and for supplying the same with Water.

50. An act to create a further Term in the Buckingham and Towcester Road, and to amend and extend the Act relating thereto; and for other purposes.

51. An act for better supplying with Water the Parish and Environs of Louth in the County of Lincoln.

52. An act for making a Street from Bothwell Street to Saint Vincent Street in the City of Glasgow.

53. An act for enabling the South Staffordshire Railway Company to make Branch Railways to Cannock and Norton, to acquire additional Lands in the Parish of Wednesbury, and for other purposes.

54. An act to incorporate the Guild of Literature and Art, and to enable it to hold Land.

55. An act to consolidate and amend the Acts relating to the Imperial Gaslight and Coke Company, and to increase the Capital of the Company.

56. An act for improving the Harbour, reconstructing the Pier, and defining the Limits of the Port and Harbour of Saint Mawes in the County of Cornwall.

57. An act for authorising the Newcastle-upon-Tyne and Carlisle Railway Company to raise further Moneys for the purposes of their undertaking; and for other purposes.

58. An act for enabling the Lancashire and Yorkshire Railway Company to construct a Railway from Kirkdale to the Liverpool Docks, with connecting Lines there; and for other purposes.

59. An act to enable the Lancashire and Yorkshire Railway Company to construct a Branch Railway to near Middleton in the County of Lancaster; and for other purposes.

60. An act for enabling the Whittle Dean Water Company to extend their Works, and to obtain a further supply of Water from certain Rivers and Streams in the County of Northumberland, in order to afford a better supply of Water to the Inhabitants of Newcastle-upon-Tyne, Gateshead, and other places in the Counties of Northumberland and Durham; and for consolidating and amending the Acts relating to such Company.

61. An act to enable the London, Brighton, and South Coast Railway Company to enlarge their Stations at New Cross, the Bricklayers Arms, and Norwood; to widen the Branch Railway called "The Thames Junction Railway," and their Main Line of Railway in the Neighbourhood of such Branch; to increase their Capital, and to establish a Provident Institution for their Servants and Workmen; and for other purposes.

62. An act to authorise the Parliamentary Trustees on the River Clyde and Harbour of Glasgow to raise a further Sum of Money, and to fund the Debt of the Trust; and for other purposes.

63. An act for repealing an Act passed in the 6th year of the reign of his late Majesty King William the Fourth, for establishing a Market for the Sale of Cattle in the Parish of Saint Mary Islington in the County of Middlesex.

64. An act for making a Railway from the Whitehaven and Furness Junction Railway near Whitehaven to Egremont in the County of Cumberland, with a Branch therefrom to Frizington in the same County, to be called the Whitehaven, Cleator, and Egremont Railway; and for other purposes.

65. An act for amending "The East London Waterworks Act, 1853."

66. An act for better supplying with Water the Town of Padham and the Neighbourhood thereof, and the Villages of Habergham or Cheapside and Lower Houses or Thornhill Holme, all in the Parish of Whalley in the County of Lancaster.

67. An act for the Improvement of the Town of Burnley and parts of the Neighbourhood thereof, and for other purposes, and of which the short title is "The Burnley Improvement Act, 1854."

68. An act for making a Railway from the London, Brighton, and South Coast Railway to Caterham in the County of Surrey.

69. An act for granting further Powers to the Eastern Union Railway Company with respect to the Extension to Woodbridge.

70. An act to enable the Stockton, Middlesbrough, and Yarm Water Company to supply with Water the Township of Norton in the County of Durham, and the Townships of Coatham and Redcar in the North Riding of the County of York, and other places on the Line of the Mains and Pipes of the Company;

and to enable the Company to raise a further Sum of Money; and to amend the Act relating to the Company; and for other purposes.

71. An act to repeal certain Acts relating to the Petworth Turnpike Roads, and to make other Provisions in lieu thereof.

72. An act to enable the New River Company to construct new Reservoirs and other Works in the County of Middlesex.

73. An act for enabling the York, Newcastle, and Berwick Railway Company to purchase all or any Estates, Rights, and Interests existing in the Lands or Grounds upon or adjoining to which the Railway of the said Company, called "The Pontop and South Shields Railway," has been formed, or otherwise to occupy such Lands or Grounds.

74. An act for maintaining the Turnpike Road from Greenhead, through Haltwhistle, Hexham, and Corbridge, to the Military Road near Shildon Bar, and the Branch Road from Corbridge to Heddon-on-the-Wall, all in the County of Northumberland.

75. An act to create a further Term in the Trowbridge Roads, to add other Roads to the Trust, to amend and extend the Act relating to the said Roads, and for other purposes.

76. An act to enable the Furness Railway Company to raise a further Sum of Money: and for the Amendment of the Acts relating to the said Company.

77. An act to make Provision with respect to Water Supply and Police for Shipley, Baildon, and Windhill in the West Riding of the County of York.

78. An act to incorporate "The Kingston-upon-Thames Gas Company," and to enable them to light with Gas the Parishes of Kingston, Long Ditton, and Thames Ditton in the County of Surrey.

79. An act for enabling the Blyth and Tyne Railway Company to construct Railways to Tynemouth and the Longhirst Station of the York, Newcastle, and Berwick Railway in the County of Northumberland; and for consolidating and amending the Acts relating to such Company.

80. An act to enable the North London Railway Company to construct a Station or Depot near to the New Metropolitan Cattle Market: to raise additional Capital; and for other purposes.

81. An act to repeal an Act for inclosing the Marsh in the Township of Newport in the County of Salop, and to vest the same and other Property in Trustees for paving, draining, cleansing, and otherwise improving the Town of Newport; and for other purposes.

82. An act to amend "The Nene Valley Drainage and Navigation Improvement Act, 1852," and to provide additional Funds for carrying out certain of the Improvements authorised by such Act.

83. An act for regulating and improving the Town of Ryde in the Isle of Wight, and providing a supply of Gas and Water thereto, and for other purposes.

84. An act to repeal an Act passed in the 9th year of the reign of her present Majesty, intituled "An Act for more effectually constituting and regulating the Court of Record within the Borough of Manchester, and for extending the Jurisdiction of the said Court," and to extend the Powers and Jurisdiction of the said Court, and to simplify and otherwise improve its Practice and Proceedings; and for other purposes.

85. An act for enabling the Cornwall Railway Company to make certain modifications in their Share Capital; and for other purposes.

86. An act for making a Turnpike Road from Chester by Farndon to Worthenbury, with a Branch therefrom to the Village of Farndon.

87. An act to consolidate and extend the Powers of the Accrington Gas and Waterworks Company, and to enable them the better to supply with Gas and Water the Townships and Places of Old Accrington, New Accrington, Church, Lower Booths, and Huncoat, in the Parish of Whalley, and the Extra-parochial Place of Henheads, all in the County of Lancaster, and to sell or lease their undertaking to the Local Board of Health for the District of Accrington; and for other purposes.

88. An act to establish a General Cemetery for the Borough of Doncaster, and for other purposes.

89. An act to extend the Powers of the Commissioners of Sewers for the Levels of Havering, Dagenham, and other places, and to enable them to construct Sewers in the Parishes of West Ham, East Ham, and North Woolwich.

90. An act for the better supplying with Water the Parliamentary Burgh or Town of Hamilton and suburbs thereof.

91. An act to incorporate the Birmingham and Midland Institute, to define its Constitution, and to enable the Council of the Borough of Birmingham to grant a Site for the Institute Buildings.

92. An act for Improving the Harbour of Blyth in the County of Northumberland, and for constructing Docks there; and for other purposes.

93. An act to enable the Crystal Palace Company to divert certain Roads, and to take and let Land on Lease; and for other purposes.

94. An act to incorporate "The Surrey Consumers Gaslight and Coke Association," and to enable them to raise further Sums of Money; and for other purposes.

95. An act to repeal the Acts relating to the Turnpiks Road from Gloucester through Painswick to Stroud, and make other Provisions in lieu thereof.

96. An act to enable the Cork and Bandon Railway Company to make a Branch Railway to Skibbereen, and to raise further Capital for the Cork and Bandon Railway; and for other purposes.

97. An act to amend an Act passed in the

4th year of the reign of his late Majesty King George the Fourth, intituled "An Act for more effectually Repairing the Wadsley and Langset Turnpike Road, and extending the same in Two Lines to join the Huddersfield and Woodhead Turnpike Road in the Townships of Uppertong and Honley in the West Riding of the County of York," and to continue the Term thereby granted, so far as the said Act and the Term thereby granted relate to the New Mill District of Road therein mentioned.

98. An act to alter the Site of the New Bridge authorised to be erected over the River Foyle at Londonderry, and to make approaches thereto.

99. An act for providing Waterworks, Gasworks, and Public Baths and Wash-houses for the Town and Borough of Beccles in the County of Suffolk.

100. An act to incorporate the Hull General Cemetery Company, and to enlarge and improve their Cemetery; and for other purposes.

101. An act for the further Improvement of Kingston-upon-Hull, and for other purposes.

102. An act for paving, lighting, watching, draining, supplying with Water, watering, cleansing, regulating, and otherwise improving the Town of Llandudno in the County of Carnarvon, for making a Cemetery, and for establishing and regulating a Market and Market Places therein; and for other purposes.

103. An act for more effectually repairing several Roads adjoining or near to the Town of Bideford, and for making several Lines of Road connected with the same, all in the County of Devon.

104. An act for regulating the Police of the Royal Burgh of Lanark, and for paving, draining, cleansing, lighting, watching, and improving the same, for regulating the Markets thereof; and for other purposes.

105. An act for more effectually repairing the Roads in the Counties of Worcester and Stafford, known as the Dudley, Halesowen, and Bromsgrove District of Roads.

106. An act to embank and reclaim from the Sea certain Waste Lands subject to be overflowed by the Tide, called Tacumshin Lake, in the County of Wexford.

107. An act to authorise the making certain Roads and stopping up certain Lanes and Footways between Kensington Gore and Brompton in the County of Middlesex, and for otherwise facilitating the formation of a Site for Institutions connected with Science and the Arts.

108. An act for enabling the Great Western Railway Company to provide additional Station Accommodation at Birmingham, Wolverhampton, and Bushbury; and for other purposes.

109. An act to repeal an Act for enlarging the Term and Powers of an Act of his late Majesty George the Third, for repairing the Road from Saint Martin Stamford Baron to Kettering, and from Oundle to Middleton Lane, in

the County of Northampton, and to make other provisions in lieu thereof.

110. An act for supplying with Water the Parishes of Bangor, Llandegai, and Llanllechid, and with Gas the Parish of Bangor.

111. An act for the Improvement of the Town of Bethesda and Neighbourhood in the County of Carnarvon.

112. An act for enabling the Company of Proprietors of the Birmingham Canal Navigations to make new Canals and other Works; and for other purposes.

113. An act for establishing Parks in or near to the Borough of Birmingham.

114. An act for constructing a Market House and other Buildings for Public Accommodation at Chesterfield in the County of Derby, and for the better regulation and maintenance of the Market there.

115. An act for making a Railway from the Stockton and Darlington Railway near Darlington to or near to Barnard Castle, both in the County of Durham, and for making arrangements with the Stockton and Darlington Railway Company; and for other purposes.

116. An act for making a Railway from the Dowlais Railway to the Vale of Neath Railway at Merthyr Tydfil, and for other purposes, and of which the short title is "The Dowlais Railway Act, 1854."

117. An act for vesting in the East Lancashire Railway Company jointly with the Lancashire and Yorkshire Railway Company certain parts of the Manchester and Southport Railway and of the Lancashire and Yorkshire Railway; and for other purposes.

118. An act to amend "The Edinburgh Police Act, 1848," and to make further Provision for Sewerage, Drainage, and Improvement of the City of Edinburgh, for deepening and cleansing the Water of Leith, and for other purposes.

119. An act for making a Railway in deviation and extension of the Halesworth, Beccles, and Haddiscoe Railway from Westhall Low Common to Woodbridge, and certain Branches therefrom, and for changing the name of the Company to the East Suffolk Railway Company.

120. An act to amend the Provisions of certain Acts relating to the Shrewsbury and Chester Railway Company, and for other purposes.

121. An act to enable the South Sea Company to realise and divide their Capital Stock and Assets.

122. An act for enabling the South Devon Railway Company to improve their Sutton Harbour Branch, and for other purposes, and of which the short title is "The South Devon Railway (Sutton Harbour Branch) Act, 1854"

123. An act to continue the Term and to amend and extend the Provisions of the Act relating to the Winchester and Petersfield Turnpike Road; and for other purposes.

124. An act to make further Provision for supplying with Water the Borough of Bradford and certain Places in the neighbourhood thereof.

125. An act for the Regulation of the Mu-

nicipal Corporation of the Borough of Yeovil, in the County of Somerset, and for the Extension of the Boundaries of the said Borough, and for the Improvement of the said Borough.

126. An act for the Conservancy and Improvement of Swansea Harbour, and for other purposes, and of which the Short Title is "The Swansea Harbour Act, 1854."

127. An act for making a Railway from the Great Northern Railway at or near Welwyn in the County of Hertford to Hertford in the same County, to be called the "Hertford and Welwyn Junction Railway;" and for other purposes.

128. An act for authorising the Stockton and Darlington Railway Company to make new Works, and for other purposes, and of which the Short Title is "The Stockton and Darlington Railway Act, 1854."

129. An act for better supplying with Water the Borough of Bradford in the County of York.

130. An act to authorise certain Improvements in or in connexion with the Lowestoft Harbour, and for other purposes.

131. An act for constructing a Bridge for Foot Passengers across the River Clyde opposite to the North end of MacNeil Street, in the City of Glasgow.

132. An act for making a Railway from the Great Southern and Western Railway near Mallow to Fermoy, to be called "The Mallow and Fermoy Railway;" and for other purposes.

133. An act to alter the Line of the London, Tilbury, and Southend Extension Railway, to authorise the Lease thereof, and the purchase of the Railway and certain Parts of the Works belonging to the Thames Haven Dock and Railway Company; and for other purposes.

134. An act for Removal of Toll Bars beyond the Parliamentary Boundaries of the City of Edinburgh, and for other purposes.

135. An act to enable the Londonderry and Enniskillen Railway Company to make a Branch Railway to Fintona, and to extend their Line at Londonderry; and for other purposes.

136. An act for making a Railway from the Irish South Eastern Railway at Bagenalstown to Wexford, to be called "The Bagenalstown and Wexford Railway."

137. An act for continuing the Term and amending and extending the Provisions of the Act relating to the Brighton, Cuckfield, and Lovell Heath, and Cuckfield and West Grinstead Turnpike Roads.

138. An Act to authorise the Extension by the Ambergate, Nottingham, and Boston and Eastern Junction Railway Company of their Line of Railway into the Town of Nottingham, the Formation of a Station there; and for other purposes.

139. An act to give further Powers to the Law Life Assurance Society with respect to the Investment of the Funds of the Society.

140. An act to authorise the Trustees of the Rochdale and Burnley Turnpike Roads to take Toll in respect of the Carriages of certain Stones.

141. An act for enabling the North and South Western Junction Railway Company to raise additional Capital, and for other purposes.

142. An act to amend the Tralee and Killarney Railway Act, 1853.

143. An act for making a Railway from Horncastle in Lincolnshire to the Kirkstead Station of the Great Northern Railway.

144. An act for making a Railway from the Shrewsbury and Hereford Railway at Leominster to Kington in Herefordshire.

145. An act for more effectually repairing the Road from the Toll House Beck, in the Township of Ireby, in the County of Lancaster, to Kirkby Lonsdale and Kirkby Kendal, in the County of Westmoreland, and through Kirkby Lonsdale to Milnthorpe, in the said County.

146. An act for making a Railway from the Ayr and Dalmellington Railway, near the Cothouses on the Farm of Pleasantfield to the Town of Maybole, to be called "The Ayr and Maybole Junction Railway."

147. An act for supplying the Township of Stourbridge and the Neighbourhood thereof with Water.

148. An act for making a Railway from the Scottish Midland Junction Railway, near Stanley, to Birnair, near Dunkeld, in the County of Perth.

149. An act to authorise the Shrewsbury and Hereford Railway Company to provide Station Accommodation in Shrewsbury and Hereford, and to enter into Arrangements and Agreements with the Hereford, Ross, and Gloucester Railway Company.

150. An act for making a Railway from the Town of Llandovery, in the County of Carmarthen, to join the Llanelly Railway at Llandilofawr, in the same County, and for other purposes.

151. An act to incorporate a Company for making a Railway from near the Picton Station on the Leeds Northern Railway to near the Grosmont Station on the Whitby and Pickering Branch of the York and North Midland Railway, and for other purposes.

152. An act to repeal the Act relating to the Thirsk and Yarm Turnpike Road, and to make other Provisions in lieu thereof, and to grant a further Term in the said Road; and for other purposes.

[To be continued.]

AUTHORITY OF COMMISSIONERS IN CHANCERY TO ADMINISTER OATHS.

THE Commissioners have the same authority as was formerly possessed by Masters Extraordinary in Chancery: viz,—to administer oaths to persons swearing to—

1. Answers and affidavits in Chancery.
2. Affidavits in lunacy.
3. Affidavits in bankruptcy.

4. Affidavits in the Court of Admiralty.

5. Affidavits in the County Courts.

6. Statutory declarations in lieu of oaths may be taken by them.

7. Receivers' recognizances.

8. Acknowledgments of deeds requiring enrolment.

9. Specifications of patents.

10. The oath of allegiance under the Alien Act.

They are *not* authorised to take affidavits in causes or matters in which they are concerned as solicitors for any of the parties.

Nor to take the acknowledgments of married women under the Abolition of Fines and Recoveries' Act.

NOTES OF THE WEEK.

EDUCATION AND EXAMINATION OF ARTICLED CLERKS.

INQUIRIES have been made as to the time when the proposed improvements in the examination of articulated clerks will take place. No change has yet been effected. Due notice will be given, and it is understood that the classical examination will not apply to persons now under articles.

It has been supposed that the intended improvements in legal education originated at the time the Chancellor of the Exchequer reduced the duty on articles of clerkships from 120*l.* to 80*l.*, in order to counteract the alleged injurious tendency of that reduction. This is not so. The suggestion was made by several Provincial Law Societies long before the reduction of the stamp duty.

ELECTION AUDITOR.

Appointed under the Bribery Act, 17 & 18 Vict. c. 102.

Llangefni.—Mr. Thomas Owen.

PERPETUAL COMMISSIONER.

Wincanton.—Edward Yalden Cooper.

In reference to the statement and remarks last week under the head of "Rumoured Professional Embarrassment," we are informed that the embarrassment has not arisen, as was supposed, from any speculations on the Stock Exchange, or any other speculations; and that the firm is not involved in the transactions in question. Two only of the members of the firm have become individual sureties to a large amount for a relation in Wales.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Master of the Rolls.

Wood v. Surr. August 5, 1854.

SUIT BY SECOND MORTGAGEE TO SET ASIDE FORECLOSURE.—INSOLVENT MORTGAGOR.

The mortgagor, after instituting a redemption suit, effected a second mortgage on the property, and which was transferred to the plaintiff before the decree and default made in payment, but it appeared that the mortgagor had become insolvent, and also that, although the plaintiff was not a party to the redemption suit, he purchased with notice and had actually intervened therein: Held, that he was not entitled to have the foreclosure set aside, although the assignee in insolvency was not made a party, and might therefore successfully contest its validity.

It appeared that after the institution by the mortgagor of a redemption suit, he effected a second mortgage on the property, and afterwards the common redemption decree was obtained, but the mortgagor became insolvent before the day fixed for payment. Default was made, and the bill was dismissed, but without bringing the assignee in insolvency before the Court. It also appeared that the plaintiff had purchased under a power contained in the second mortgage before default was made in payment, and now filed this bill to set aside the foreclosure in the redemption suit.

Rossell and Elderton in support; Palmer and J. Hyde Palmer, contra.

The Master of the Rolls said, that the foreclosure was good, although the plaintiff was not a party to the suit, as he had distinct notice and had actually intervened therein, and he could not take advantage of the fact that the assignee in insolvency could successfully contest the validity of the foreclosure. The bill would therefore be dismissed, with costs.

Vice-Chancellor Stuart.

James v. Lord Wynford. July 3, 1854.

WILL.—CONSTRUCTION.—EXCLUSION OF CERTAIN ESTATES FROM LIFE ESTATE OF WIFE.

A testator, by will, gave to trustees all his real and personal estate which he might derive from his aunt or any of her family, in trust for his wife for life, with remainders as therein-mentioned. It appeared that the testator was entitled, under the will of his grandfather, to the remainder in fee expectant on the death of his aunt in certain estates: Held, that his widow was not entitled to a life estate therein.

THE testator, by his will, gave to trustees

all his real and personal estate, except the real and personal estate, which he might derive from his aunt, Mary Ann Taylor, or any of her family, in trust for his wife for life, with remainders as therein-mentioned. It appeared that the testator was entitled, under the will of his grandfather, to the remainder in fee expectant on the death of his aunt in certain estates at Crewkerne, and the question was, whether his wife was entitled to a life estate therein.

Elmsley and Karslake for the widow; Malins, Walker, Grove, Bates, Giffard, and C. M. Rossell for other parties.

The Vice-Chancellor held, that the widow was not entitled.

Vice-Chancellor Staud.

In re Allen's Trust. July 8, 1854.

TRUSTEE RELIEF ACT.—JURISDICTION ON PETITION TO DIRECT ISSUE.

Held, that the Court has jurisdiction under the 10 & 11 Vict. c. 96, where there are no creditors or unascertained claimants, on a petition for payment of a fund out of Court, although the sanity of a party is at issue.

On this petition under the 10 & 11 Vict. c. 96, for the payment out of Court of a sum of money,

Roll objected that a suit should have been instituted as the sanity of a party was at issue, referring to s. 2.¹

Willcock and Metcalfe in support.

The Vice-Chancellor said, that as there were no creditors or other unascertained claimants, and all parties were before the Court, there was jurisdiction under the Act to direct an issue if required, and the objection was accordingly overruled.

¹ Which enacts, that "such orders as shall seem fit shall be from time to time made by the High Court of Chancery in respect of the trust moneys, stocks, or securities so paid in," &c., "upon a petition to be presented in a summary way to the Lord Chancellor or the Master of the Rolls, without bill, by such party or parties as to the Court shall appear to be competent and necessary in that behalf," &c.; "and if it shall appear that any such trust funds cannot be safely distributed without the institution of one or more suit or suits, the Lord Chancellor or Master of the Rolls may direct any such suit or suits to be instituted."

The Legal Observer,

AND

SOLICITORS' JOURNAL

SATURDAY, OCTOBER 28, 1854.

AGGREGATE MEETING OF ATTORNEYS AT LEEDS.

A NUMEROUS Meeting of Attorneys and Solicitors took place on the 18th October, at Leeds, consisting of Deputations from London, Liverpool, Manchester, York, Lancaster, Hull, Birmingham, Lincoln, Sunderland, Wrexham, Horncastle, Horbury, Maidstone, Wakefield, and Bradford. We shall subjoin a full report of the proceedings of the meeting, and it may be useful, by way of introduction, to direct the attention of our readers to the several important topics which were discussed at the meeting.

The circular convening the assembly did not state its precise object, or the matters which would be brought under its consideration: it was probably thought unnecessary to enter into any previous details, as the grievances to be redressed, and the interests to be promoted, were well known to the parties assembled. It was, however, suggested at the meeting that on another occasion it might be expedient previously to prepare papers for the discussion of the meeting. At all events, the suggested resolutions might be sent to the members of the Provincial Law Societies, as well as the Metropolitan and Provincial Association. Be this as it may hereafter, the subjects introduced on the present occasion were calculated deeply to interest the meeting.

1st. We may notice the important object pointed out by the Chairman, in the necessity of restoring their branch of the Profession to the *status* it formerly occupied, and which it ought to occupy, as well for the advantage of the public as themselves. The recent disposal of patronage and the course of legislation had tended to lower the Attorneys and Solicitors by depriving them of *valuable appointments* to which they were justly entitled. Agitation was therefore necessary to set themselves right in the

estimation of the public. One of the causes of this state of the Profession was justly ascribed to the overcrowded state of the Bar compared with that of the Attorneys, and it was observed that in 1817 the former were only 891, and the latter 5,941, whilst now the Bar has increased more than fourfold,—viz., to 3,845, and the Attorneys were only 11,326;¹ and consequently honourable appointments formerly held by Attorneys were conferred on Barristers.

2nd. It was also observed, that, in the numerous *Commissions for the Reform of the Law*, the Solicitors were excluded, and consequently, however learned and eminent, might be the Commissioners, yet being deficient in practical knowledge and experience, their measures were generally unsuccessful. An exception, indeed, existed in the new Commission relating to the Registration of Deeds, which included two Solicitors,—an improvement that might be ascribed to the efforts of the several Law Societies.

Hence the importance of unity amongst the members of the Profession; and they were strenuously urged to associate themselves together.

3rd. Reference was then made to the Bills in Parliament, particularly for the *Registration of Assurances* and the *South Sea Trust Company*, both of which were destructive of the interests of the public, and which had been successfully opposed at considerable expense by the Incorporated Law Society.²

4th. Another topic urged upon the at-

¹ This number, we suppose, includes proctors, notaries, and certificated conveyancers. The actual number of attorneys and solicitors in November, 1853, on the Registrar's Roll, was 9,896. The argument is therefore strengthened.

² For the further exposition of these points, see Mr. Bailey's Speech, pp. 498, 6, 7.

tention of the meeting was, the injurious consequence of *separating the two branches of the Profession*, and thus preventing the useful and, practical improvements in the administration of justice which had taken place in America, where the Bar and the Solicitors formed one body;—where each individual took the department he thought best suited to himself, and where there was no distinction in legal status. Reference was made to the many eminent examples of legal authorship by our American brethren. The evils resulting from this disunion might be estimated, by considering the repeatedly abortive attempts to amend the Bankrupt Laws and the Registration Scheme.

5th. Next the *remuneration* of the Profession, fixed as it had been in ancient times, was brought under consideration, and the arbitrary and vicious regulations which still existed, were strongly animadverted upon—superinducing as they did delay and expense, consequent upon the refusal of just allowances to the Solicitor for his skilful and laborious exertions, and driving him in self defence to prepare briefs and cases for Counsel instead of applying his own talent in the service of his clients, whose interest it was to have the work done well at a reasonable cost. Naturally, skilled labour obtained a higher reward; but by the legal tariff the youngest and least informed practitioner received as much as the experienced veteran.

6th. Further, the *exclusion of Attorneys from the Bar* until they had ceased to practice for five years (formerly only two), was an unwarrantable restriction, whilst other persons who had no knowledge of the law might be called after keeping Terms for three years only.³

7th. The advantage of these Associations was also urged, in that they upheld the rules of *professional honour* and discouraged unworthy practice. It was right also to notice that the most able and successful reforms of the Law had originated with these Associations, and their members had always assisted in useful alterations without regard to their personal interests. It should also be recollected that a multitude of practical suggestions had been made by members of their branch of the Profession, both in London and the country, but hitherto without effect.

8th. The next, and perhaps the most important point of all, was the injustice done to the Profession by a large part of the

public press, and, the necessity of counter-acting its injurious influence on the public mind. This was one of the chief objects in establishing the Society. The press was partly under the control of those who were hostile to the Profession, and who habitually aspersed its members. It was absolutely necessary to grapple with this powerful abuse, and as the interests of the Profession and those of the public were strictly identical, the temperate and judicious, but manly and unflinching, assertion of the rights of the Profession, was the soundest policy. It was most unwise to submit quietly to these aspersions. There should be a vigilant, active, and systematic co-operation through the medium of the press itself, and whilst one part unjustly attacked, another should zealously defend, and the defence should be continuous and systematic. It was not enough occasionally to refute falsehood or slander: obstinate attack must be overcome by obstinate resistance; prejudice must be overthrown by reiterated exposure. But, for this purpose, the Association must be liberally supported. Time and talent must be devoted to the task of refuting the wrong and vindicating the right. It could not be expected that great exertion would be bestowed and sufficient talent enlisted in the service of the Profession, without encouragement or reward. But whoever was engaged in advocating the cause of the Profession, must be supported by the *facts* which its members could communicate in refutation of the libels, and in exposing the absurdities, which appear in the newspaper press. The best part of the Profession was too apt to laugh at or despise the blunders and misrepresentations of their assailants. "Every nice offence" against the reputation of an Attorney need not "bear its comment" with severity, but nothing of a serious character should be passed over unnoticed. For all these purposes, however, increased support was demanded from the members of the Association, by the constant communication of the result of their experience, and, "though last, not least," by increasing the number of its supporters and the funds of the Association.⁴

9th. The subject of an *educational test of fitness*, prior to entering into articles of clerkship, was also advocated at the meeting,—suggestions on which had been communicated to the Incorporated Law Society

³ See on these and other topics, Mr. Field's Speech, pp. 497, 8, 9, *post*.

⁴ Vide Mr. Shaw's Speech for the full statement of this part of the discussion, pp. 500, 1, *post*.

and frequently considered by its Council. Whether the examination should be extended to ancient classics and mathematics, or confined to a curriculum of a more general and practical character was to be considered; but some examination should precede the clerkship, and ensure a liberal education before entering the legal arena. The Legislature, indeed, had already signified its approbation of collegiate attainments by shortening the period of service to graduates.⁶ A pecuniary test, it was observed, could be no evidence either of respectability or fitness.⁶

We have thus glanced briefly at the "nine points of law" which formed the subject of observation at this professional gathering, and beg to refer our readers to the detailed report of the speeches of the several gentlemen who addressed the meeting. There may be differences of opinion on the utility and expediency of these general meetings of Attorneys; but those who are on the doubting side of the question, should remember that the Bar in its Inns of Court has the advantage in Term Time of daily "coming into Commons," and at all the assizes of its Bar-mess, and thus possesses frequent and ready communication, whenever its interests are affected. In recent times, meetings have been called by the Attorney-General on the personal concerns of the Bar;⁷ but, more than all, the Bar is represented in Parliament by nearly one-tenth of the whole legislative body in both Houses. It may therefore not unreasonably be permitted to the second branch of the Profession to hold an annual aggregate meeting of its leading members, besides the ordinary yearly meetings of the Incorporated and other Law Societies, at which their affairs are stated and considered.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

AGGREGATE MEETING IN LEEDS.

ON Wednesday, the 18th inst., a Meeting of Delegates of the Profession from all parts of the kingdom, convened by the Metropolitan and Provincial Law Association, was held at the Philosophical Hall, Leeds.

⁶ 1 & 2 G. 4, c. 48 (1821).

⁶ It is certainly absurd to suppose that the difference between 80*l.* and 120*l.* will produce the downfall of the Profession.

⁷ Irregular payment of fees, &c.

The gentlemen present included, amongst others the following: London—Mr. E. S. Bailey, Chairman of the Managing Committee of the Society, Mr. E. W. Field, Mr. E. Benham, Mr. W. Shaen, the Secretary; Leeds—Messrs. J. H. Shaw, R. E. Payne, J. Sangster, E. Bond, T. T. Dibb, W. S. Ward, J. Bulmer, T. G. Teale, H. Dawson, E. Eddison, A. Horsfall, J. Dunning, R. L. Ford, R. Barr, W. Bruce, H. Snowden, S. L. Booth, F. Ferns, S. Chapman, S. Hick; Liverpool—Messrs. H. H. Stattham, R. A. Payne, G. Webster, F. Horner; Manchester—Messrs. J. F. Beever, G. Thorley, J. Street, J. Janion, W. H. Partington, T. Baker, F. Robinson; York—T. Hodgson, J. Richardson, H. Brearey; Lancaster—J. Hall; Hull—W. H. Moss, G. L. Shackles, G. Stamp; Birmingham—J. W. Unett, A. Ryland; Wrexham—J. Lewis; Lincoln—J. Moore; Sunderland—T. Burn; Horncastle—J. H. Parkinson; Horbury—J. Bayldon; Maidstone—J. Case; Wakefield—J. Nettleton; Bradford—J. Taylor.

E. S. Bailey, Esq., Chairman of the Committee of Management of the Metropolitan and Provincial Law Society, in opening the proceedings, said it must be matter of congratulation to all to see so numerous an assembly, more especially so when they considered that several present were a deputation from, or representatives of, a much larger body, who would have been present had not circumstances under which they were placed prevented them. One additional reason why the attendance had not been more numerous was the fact, that the day of meeting had been fixed without bearing in mind that that was the week of the sessions throughout the kingdom;—and this, as he knew, had had the effect of depriving them of the presence of many valuable and estimable members, who would otherwise have been amongst them, and who deeply regretted their unavoidable absence.

The attendance that day of so large a body of gentlemen rendered it unnecessary to enter into any lengthened vindication of the objects of the Metropolitan and Provincial Law Association, because their presence proved the interest they took in the objects of the Association. One great object was to restore—if he might so term it—their branch of the Profession to the *status* which it formerly occupied, and which they felt it ought to occupy, not only for their own advantage, but also for the advantage of the public, for he was satisfied it was of more importance to the public that their branch of the Profession should maintain its dignity, character, position, and respectability than any other branch of the Legal Profession; and, indeed, of any other profession existing, always excepting the clergy. This would be apparent when it was considered what high and important duties were cast upon the solicitor, and which none but persons of education, integrity, and high tone of feeling could properly discharge. They were consulted in the more important matters affecting man and society, and it became there-

fore the duty, as it was the interest of the public, to uphold them in their proper position. And yet the recent disposal of patronage, and the recent course of legislation, had been, he could not say to degrade, but certainly to lower, their branch of the Profession, by depriving them of high and valuable offices which they had formerly held, and to which they were justly entitled. It was not contended that as a body they had forfeited their claims to these distinctions by any change in their character or conduct; on the contrary, it must be admitted by all who considered or understood the subject, that their branch of the Profession had never been filled by more intelligent, high minded, or able men than (he might use the term) then adorned it. Every member of the Legislature had his own professional adviser, to whom, with the utmost confidence, he entrusted the business relating to his property, and often his character, and his most intimate relations in life. Doubtless it was matter of congratulation in having secured a person in whom such confidence could be placed; and whilst, therefore, they as a body were individually highly esteemed by their respective clients, these clients, in their legislative capacity, had certainly of late done all in their power to lower the status, and thereby most effectually impair the efficiency of their body. This ought not to be, nor was it just to the public that it should be, and he trusted, therefore, that the Profession would never cease to agitate until they had set themselves right in the estimation of the public, and regained the position which they were so justly entitled to maintain. There was, however, one reason for this, and, in adverting to it, he desired to be considered as not speaking invidiously, for he did not wish to do so, nor would the meeting bear with him if he did. It, however, happened that since the peace in 1815, the army and the navy being comparatively closed to the younger sons of the aristocracy and the higher classes of gentry, they had in large numbers become members of the bar. That was proved by the returns which showed that in 1817 there were 5,941 attorneys and 891 members of the bar; whilst, in 1854, there were 3,845 members of the bar, and 11,326 attorneys; so that in 1817 the members of the bar were not one-seventh of the whole, and now they were nearly one-third. The result was, that the bar must have some employment over and above that which the legal business of the country gave them. Consequently, if an appointment became vacant, an honourable appointment, and one which reflected dignity and respect upon their branch of the Profession, and which formerly had been filled by them, it was taken away from the solicitor or attorney, and conferred on a barrister of a certain standing. These appointments were so given to the Bar, not only in the ordinary way of patronage, but absolutely by Acts of Parliament, which prevented their being filled except by barristers. He repeated that these observations are not meant invidiously towards the Bar, whom, as a body, he, in common with all

present, must entertain the highest respect and esteem. The Bar of England has been the surest safeguard of our constitution, and was justly considered one of the brightest ornaments of the country—he might add, of the world. All he desired was, that they should keep within their own limits; and whilst they engaged in their own just rights and privileges to the utmost, they should not trench upon those of the other branch of the Profession. Any attempt to do so would, he was convinced, in the end fail, if the attorneys and solicitors were only true to themselves—for if they could be brought together to act as a united body, and with a cordial understanding, there was no part of their rights (and they wanted nothing but that which was right), which they would not be able to carry. There was another point which was of importance to their branch of the Profession and the public. There had been a great many changes recently, attempted in the legislature of the country. Commissions after commissions had been appointed; and who had been placed upon them? High minded and honourable men, no doubt, and men of talent; but in most—indeed in almost all—cases, they had not had practical men joined with them; and the very want of practical men of their branch of the Profession, who would have informed them of the practical working of the proposed measures, was the reason why many of these proposed measures had fallen to the ground; whilst those which had passed into law had proved so crude and ill digested that it had been found impossible to carry them effectually out, and they had, therefore, become comparatively useless. Whether this had arisen from jealousy, or whether their branch of the Profession was not thought worthy to be associated with those persons of whom these commissions were composed, he could not say, but certain it was they had not been associated with them. The exertions, however, which had been made since the formation of their Association had in some degree stopped this downward career. It had been seen that they were not disposed to allow themselves to be degraded without a struggle. He would point as an example to the case of the Registration of Assurances' Commission, upon which two distinguished members of their branch of the Profession had been appointed. That was a move in the right direction; and he believed that in consequence the efforts of that Committee would come out in the shape of a report better considered and better capable of being carried out than some which had preceded it. They must therefore all feel—if he had carried them along with him—the necessity of unity amongst themselves. If that were so, how could that best be accomplished? Their local associations were unquestionably productive of good, and in the North of England they might well be proud of them. Local associations, however, would not alone do. It was not as several distinct bodies, but as one concentrated whole that they must move. They must move as one; and they could only do this by uniting

themselves with the Metropolitan and Provincial Law Association, whose object was to carry out by a concentrated effort what he had attempted to describe; and he thought that the good that this Association had already accomplished was a proof that if properly supported it was capable of accomplishing all they could desire. He was sorry to say that, though the number of their Profession reached 11,326, the number of the members of their Association scarcely amounted to 1,000. It was deeply to be regretted that at the present moment they had hardly one-eleventh of their body enrolled as members, but he hoped this would be altered; and it was a matter of congratulation that though the number was comparatively small it contained some of the best names in the Profession. The meeting at Derby had been productive of great good; and he trusted that the present meeting would be productive of even greater good. If they felt the importance of this Association and the great good effected by its means—if they exerted themselves, every one individually, to obtain additional members and the co-operation of the great body of the Profession, and by these means gave the Association greater efficiency, they would be successful in placing the society upon such a basis as to carry out the objects for which it was established. He would make one observation to prove the necessity for increased exertions and increased funds, and in alluding to the funds, he could not wish they were more economically managed, and only expended in what in the strictest sense were proper objects. Beyond the payment of house-rent, and salary of their worthy secretary, and for the printing and publishing of their report and papers, there was not another item of expenditure. But what was the instance to which he had alluded? Two Bills were introduced into Parliament last session, as important, perhaps, as any that had been introduced for very many years. One was the Bill of the South Sea Company, and the other was the Registration of Assurances' Bill. Anything more vicious in principle or more destructive of the interests of the public he could not conceive. How such measures ever assumed a definite form he could not understand; and still more unaccountable was the fact, that these measures received the sanction of one who had been one of the brightest ornaments of the Bench, and some of the merchants and bankers of the country. When these Bills were brought into Parliament, their Association opposed them; but as they had assumed the form of private Bills the opposition to the Bills to be effective must necessarily be expensive, and the want of funds to conduct the opposition prevented the Association from effectually opposing the Bills; fortunately, notwithstanding the heavy drains on their funds, the Incorporated Law Society stepped forward in this hour of need. Their President, Mr. Kinderley, and he hoped he might be excused naming him, for he had done excellent service to the Profession and the public, devoted his valuable time and talents to the opposition, in

which he was most ably supported by another member of that body, Mr. Gregory, jun., and by their united efforts these bills were thrown out. That opposition, however, although the expense was confined to actual money payments, cost a very large sum. It was manifest, therefore, they could not expect great results from the Metropolitan and Provincial Law Association unless funds were furnished for carrying out and supporting the objects for which that society was formed. He trusted, therefore, that on every ground, as affecting themselves and the public, this Association would meet with every possible support; and that none of them would cease their efforts until they had really placed it on that footing which would make it truly valuable as an institution.

E. W. Field, Esq., proposed the first resolution, which was as follows:—

“That for the purpose of carefully considering every projected alteration in the law, as well as to maintain the rights and increase the usefulness of the Profession, it is important that the attorneys and solicitors throughout the kingdom should form a united body.”

Having argued that laws were worthless unless there were persons possessing legal information to carry them into effect, he proceeded to observe that both in ancient and modern days the Profession of the Law in every civilised state had been of the very highest importance—second perhaps to none. The necessity of introducing judicious ameliorations of the law was admitted by all; but if they looked at the Statutes passed by the British Legislature within the last ten or fifteen years, how many would they find that had become dead letters? How many had been framed in utter ignorance of what was absolutely necessary to bring them to bear upon society? The most cursory glance at many of their Acts would show how ignorant were those who framed them of the requisites for carrying their own laws into practical operation. A great deal of this was owing to the distinctions existing in this country between the Bar and the Solicitors, who were—if they went really to the bottom of the thing—the mere servants of the Bar. The Judges were of the Bar, and acted and made rules for the Profession with Bar prepossessions, with views drawn from Bar practice, and with an earnest desire to uphold at the expense of the Profession, though they may not know or intend it, of the other branch and of the Public at large, the interest, so called, of the Bar. Why was there this arbitrary distinction between the Bar and Solicitors in this country? He regarded this as an interesting question of economical science and well worthy the attention of political economists. If they went to America, they would find there a body of lawyers than whom none could be found more distinguished. Who sent to England their best text books, their *Storys*, their *Kents*, and such works as “*Sedgwick on the Measure of Damages*”—a matter never touched by any English writer? They came from America.

They naturally asked what were the arrangements of the Legal Profession in a country where they found lawyers becoming presidents of the republic, as was the case with General Pierce, who was a successful lawyer before he became a soldier. They found that practically each took the department he thought best suited to himself; some acted very much as an attorney does in England; and others spending the greater portion of their time in the Courts as advocates; but there was no distinction in legal status between the two. Were they wise to allow in England the continuance of the present wide gulf between the two branches of the Profession? That was a question which lay at the bottom of the efficiency or non-efficiency of the administration of the law. The speaker then turned to the abortive Statutes which had been passed by the Legislature within the last few years, especially mentioning the tinkering in the Bankruptcy Laws, which he said had been altered and realterd, modelled and remodelled, extensive provisions introduced, and enormous expenses incurred, which never would have been heard of if practical lawyers had been consulted, and if practical knowledge, instead of theories destitute of any pervading principle, had been allowed to have weight in the framing of those laws. Adverting to the different systems of England and America, he said that he asked the opinion of Mr. Dudley Field, one of the most able lawyers of New York, as to the American system, and he received for answer, "Do you think that Story or Greenleaf, or other such text writers, would have been able to write the books they have, if they had not begun by practising as solicitors, and been in habits of confidential personal intercourse with all classes of the people with whom they had to deal?" The question was by some regarded as theoretical; but he concurred with a learned Judge, who said the other day that it would in a short time become one of the most pressing practical subjects bearing upon the welfare of the Legal Profession and the administration of the law. He then referred to the registration scheme of the session before last, which he characterised as the most ignorant and mischievous project ever propounded, and one which might well be laughed at and ridiculed by any man who has spent a fortnight with his eyes open in a solicitor's office. It would have entailed enormous expenses upon the owners of property; it would have gone far to render every title in the country bad; and it would have made the transfer of land next to impossible. Referring to the regulations of Professional Remuneration by Act of Parliament, he said the law of bygone ages regulated the charges of dealers in most of the necessities of life; but this ignorant legislation had long ago given place before the rational principle of leaving prices to be regulated by supply and demand, as to all classes of the community except solicitors. In their case only the antiquated absurdity was still retained. He illus-

trated its absurdity by several instances. One was, that they were paid at the rate of 1s. per folio, so that if they had a draft of 100 folios and simply wrote it out, they were entitled to 5l. It was often much less laborious to frame a long draft than a short one, and if they spent half a day or a day in shortening the draft, so as to make it not more than 50 folios, but probably more valuable for their client, on account of the mental labour, then they would have their bill reduced to 2l. 10s.; thus losing half their fee, besides all their time and trouble. These arbitrary and vicious regulations—to which, by the way, the Bar were not subjected—made it the immediate and apparent, though not the ultimate or real, interest of lawyers to object to improvements; but if these restrictions were removed, and they could charge fairly and equitably, then they would be free from all temptation, or the appearance of temptation, unfavourable to legal reform. Another of the crying evils which the public sustained, by these restrictions upon attorneys, was the high premium they offered for employing the Bar without real necessity. He gave a strong instance of this from Chancery practice. There interlocutory questions which used to be discussed in Court, and by the employment of barristers, might now be disposed of at the Judges' Chambers through the agency of the solicitor; and he had not unfrequently spent a considerable part of the night in preparing for an argument on such points in Chambers the following day, and some hours during the following day in the Judges' Chambers. For these exertions he might claim 13s. 4d.; or, if the officer were in a generous mood, get 1l. 1s. But if instead of taking this trouble he went to Chambers with a mere glance at the papers, and stated that there was any difficulty in the case and that it had better be taken into Court, it was readily ordered, and he would get his 13s. 4d. for attending the Court or sending a clerk to attend it, besides his six or seven guineas for preparing the brief for counsel. So that here again the regulations were made to work advantageously for the barrister, by inducing attorneys to place briefs in their hands; and disadvantageously for attorneys and their clients, whose interest it was to have the work done well at a reasonable cost. The arbitrary rules of pay imposed on our branch of the Profession present to the judgment of the political economist many other contradictions to those rules which nature itself under our free-trade principles of supply and demand displays, not only in many other occupations, but even in that branch of the Legal Profession which is the lawgiver on this subject i.e. attorneys and solicitors. By nature skilled and experienced labour obtains high wages; by the legal tariff imposed on us the work of the attorney who obtained the age of 21, and was admitted last Term, is assessed at the same rate as the work of the most able veteran of the Profession, while by the rules of the Bar a higher fee must always be paid to the veterans than to the juniors. Another point of similar interest was

the special rule to exclude attorneys from becoming barristers. Any utterly illegal man, a retired tailor or scavenger, for instance, might be called to the Bar in three years; while, for purgatorial reasons he supposed, the attorney, who knows necessarily something of the subject beforehand, is required to wait five years. These were important questions, affecting the interests of the public even more than the attorney: and it was an undeniable truth that there was no real difference between the public interest and the interest of a great body like their Profession.

R. E. Payne, Esq. (Leeds), seconded the resolution, in which he expressed his most hearty concurrence.

The resolution, as well as those subsequently proposed, was carried unanimously.

R. A. Payne, Esq. (Liverpool), proposed the next resolution, which was,

"That although these objects have to some degree been obtained by means of the various Local Law Associations throughout the country, yet it is only by such an organisation as that of the Metropolitan and Provincial Law Association that they can be effectually secured."

He said he thought their associations in the various localities had been of much service in keeping up good rules and preserving the etiquette of the Profession, as well as in discouraging those who might otherwise have acted with impropriety. He was afraid, however, that the measure of the Chancellor of the Exchequer, passed 18 months ago, was calculated to accelerate the introduction of unworthy persons into the Profession. He spoke in terms of praise of the conduct of the gentlemen of London who had taken an active part in the management of this Association, and especially eulogised the conduct of the worthy secretary, Mr. Shaen, to whom he wished to pay a tribute of thanks, in the name of his brethren generally. He said that the members of the Metropolitan and Provincial Law Association had received more than the value of their subscriptions this year, by the admirable way in which the directors had brought into one focus and placed before the members the whole of the Statutes of last session.

W. H. Moss, Esq. (Hull), seconded the resolution. He said it wanted no meeting like that to satisfy the gentlemen present of the importance of that association; but he thought it would not be time wasted if what was said there that day reached the public ear, for with the public the members of their Profession ought to be set right. The public had been much misled by writers who had found it to their interest to misrepresent and vilify the Profession. It was but right, therefore, the public should know that the most able and successful reformers of their own Profession were the lawyers. They had never studied personal advantage or personal gain in any way; but wherever they had seen an evil or an error that could be corrected, they had boldly come forward and assisted in the alter-

ation and reform without regard to personal feeling or pecuniary considerations. So much did this feeling pervade the Profession, that it would be found upon investigation that many measures for which the Government or some eminent Judge or barrister had received the warmest praises throughout the country, had really originated with, or been suggested by, some metropolitan or provincial attorney. Their chairman had alluded to the anomaly of the legislation against attorneys by those who held attorneys in so much personal esteem; and it certainly did seem to him a strange inconsistency. Men of all ranks sought the solicitor, and made him their confidant, their friend, their adviser in matters of life and death, in pecuniary concerns, and in domestic afflictions. No man hesitated to trust his property, his reputation, his domestic peace, in the hands of his attorney; and yet the attorney was, by the very men who placed such implicit reliance upon his honour and integrity, declared unworthy of trust when his own pecuniary interests were concerned. They declared the attorney to be competent to do anything and everything but charge 6s. 8d. The speaker next adverted to the attacks made upon the Profession by a portion of the press, and said he looked forward to the time when the press would see it to be its duty to defend the Profession from the unjust aspersions cast upon it. After pointing out the beneficial operation of the local law societies, and the far greater benefits conferred by the Metropolitan and Provincial Law Society, Mr. Moss concluded by urging all the gentlemen present to become missionaries in their several localities, and spread the knowledge of the Association, and increase the number of its members.

T. Hodgson, Esq. (York), proposed the third resolution, as follows:—

"That this meeting, therefore, pledges itself to support the Metropolitan and Provincial Law Association by every means in its power for the purpose of placing it on such a footing as shall enable it to act with efficiency."

He expressed his concurrence in what had fallen from Mr. Field, and said, that so far as his knowledge went, there was no Statute in this country which created the arbitrary distinctions between the two branches of the Legal Profession which had been assumed and acted upon by the Bar, who had been allowed, by the sanction of the Judges, to form themselves into a sort of club, claiming the exclusive right of advocacy in every Court in the country. The Bar had, of course, a right to frame their own rules, so long as they did not interfere with the rights of the public; but seeing that the interests of the public were seriously interfered with by those rules, it was the duty of the public to interfere and stop the monopoly. He believed that in the popular mind the position of the Profession was improving. And he was quite satisfied that the odium into which the Profession fell years ago, arose, in a great measure, from bad legislation, and the sad state

of the law, which frequently compelled every honest attorney to advise his client, even if he had a perfectly good case, not to venture to go to law. But now that there were so many improvements in the law, and people began to see that justice would be done them, the mistaken feeling against attorneys was rapidly wearing off,—not that it ought ever to have existed, the fault having been with the law, and not with the lawyers.

Arthur Ryland, Esq. (Birmingham), seconded the resolution, and, referring to an observation made by Mr. Moss, said, that if reports were made, showing the suggestions of law reform made by attorneys, which had not been adopted, as well as those which had been passed into law; and if similar returns were made with regard to the reforms which had been suggested by barristers, it would be found that the preponderance of real, practical, valuable reforms, lay with the attorneys to an overwhelming extent. As a means of aiding this Association, he suggested that they should hold annual meetings, at which papers should be read and discussions taken upon legal subjects, treated in a scientific as well as a practical way, after the manner of the British Association for the Advancement of Science. With respect to Birmingham, the members of the Association resident there called a meeting recently, at which their respected friend, Mr. Unett, presided, and where they passed a resolution, a copy of which was sent to every solicitor in the town, and which would be followed up by an active canvass. The resolution they had thus passed and circulated was as follows:—"That this meeting is of opinion that the importance of the objects of the Metropolitan and Provincial Law Association—the uniformly zealous and well directed efforts of the committee to maintain the character and interests of our branch of the Profession—and the unremitting and successful attention which the committee has devoted to the various Bills of Parliament and Rules of Court which have from time to time been introduced for the amendment of the law—entitle the Association to a more general support of the solicitors in Birmingham than it has hitherto received."

Mr. Field, in answer to a question, said, that in America they adopt the ancient practice of England—the Bar and the solicitors being the same. The English Inns of Court were formerly Universities; and the Bar of America had now to pass an examination. Judge Story, whilst Judge of the Supreme Court of Appeal, was held in much more honour as having the head professorships of the great school of law in America. He spent one half of the year in teaching school, and the other half in presiding as one of the Supreme Judges of the country. But the great difference between the Bar and the Attorneys in this country was intimately connected with the rules of right and wrong. If an attorney received 100*l.* to do something, which he did not do, he would, as a matter of course, return the money. But the Bar holds it to be unprofessional to return

a fee, even if the barrister never attended the Court where the case was heard. He said that the practice of the Bar at the present time was—far more than at any previous time—to take the brief and the fee, and not to attend the Court. These were the gentlemen who talked of the rights and wrongs of the people; and yet many of the Judges themselves had in this way very frequently sinned against what he (Mr. F.) called one of the plainest laws of right and honour. In America, in such a case, the barrister, however high his position, would return his fee as a matter of course.

J. H. Shaw, Esq. (Leeds), on rising to move the next resolution, said, the part allotted to him was fortunately so limited in extent that he should not have to trespass long upon the time of the meeting. The subject of his resolution was one he had often dwelt upon on former occasions, and he could only now repeat a more than twice told tale, but he could accompany the reiteration of it by saying that another year's experience had greatly strengthened his conviction. They had received from Mr. Field and other speakers much valuable information upon the general state and future prospects of the Legal Profession, and upon the endeavours—and he hoped he might say, to some extent, the success—of the Metropolitan and Provincial Law Association, in arresting the progress of the downward course of which they had so much reason to complain. They had heard also from other gentlemen, and especially from Mr. Moss, that justice was not done to the Association by the public (nor indeed, he, Mr. Shaw, thought, was it done by even their own branch of the Profession), for the services which it had rendered. That injustice arose simply from its services not being sufficiently made known, and he was therefore exceedingly desirous—(indeed, he thought it of the highest importance)—that greatly increased publicity should be given to the labours of the committee of the Association, so that the members of the Profession and the public might be much better informed than they were of the amount of good which had been done, and (what he thought quite as important) the amount of evil which had been prevented. That could only be accomplished through the medium of that powerful organ, the influence of which on the public opinion of this country was almost irresistible, he meant the press. One of their main objects, therefore, ought to be, through the press, to make generally known the claims of the Profession, and demonstrate the interest which the public had in supporting those claims; because he maintained it to be a clearly demonstrable truth, that the interests of the Profession and those of the public were completely identical. This was necessary, as a matter of justice to themselves, but he urged it for the still more important purpose of increasing the efficiency of their institution, and its power of rendering that service to others, as well as to themselves, which they wished to render. His allotted province, however, was even more limited than this. The point to

which he had particularly to call their attention was that this medium of communication with the public was, in part, under the control and guidance of hands decidedly hostile to them. He was quite aware that there were gentlemen who thought it hazardous to deal freely with this topic for fear of rousing into increased activity the hostility of which they complained; but for himself, he would say explicitly (and he hoped he spoke the feeling of the meeting), that, whilst he acknowledged the power with which they had to grapple, he was not disposed to quail before it. He believed that in public as well as in private life the temperate and judicious, but manly and unflinching, assertion of right, was not only the truest honour but the soundest policy, and he believed that truth to be especially applicable to the relation of their branch of the Profession with the press. A portion of that mighty engine habitually aspersed their Profession, and a long-continued silence under those aspersions had given to them something like the authority of admitted facts, and enabled those who made them to assume an appearance and semblance of impartial observers and critics, when they were in reality nothing better than prejudiced and often interested partisans. He believed they would to no inconsiderable extent, disarm those writers of their power of mischief by the very act of placing them in their true position; not that of impartial judges, to which character they had no claim whatever, but of either parties or advocates, and generally very un candid advocates, on one side. For these reasons he had always urged upon the committee of the Association a vigilant, active, and systematic operation through the medium of the press, which if it afforded the bane would equally afford the antidote, for it was as open to their body as it was to their assailants. He laid particular stress upon the operation being systematic. He was aware that there every now and then appeared articles of great ability, which, on particular questions, and to those who went to the consideration of them with minds not already imbued with prejudice, might carry conviction; but these occasional and spasmodic efforts in isolated cases would have little effect upon persons whose minds were pre-occupied with prejudices instilled into them by the systematic misrepresentations of months and years. If they wished to exercise any beneficial influence through the press, it must be by making the defence of the Profession as systematic as the attacks upon it; and how could that be better done than by the influence of an association like this? and what was necessary for doing it but that the Association should receive from the Profession a more general and efficient support? What they required was the steady unremitting devotion of time and talent in the important task of correcting and refuting misstatements and doing themselves justice; but they could not command, nor could they wish honour to themselves except, that steady unremitting devotion of time and talent, unless they had the means of fairly remunerating those whom they en-

gaged. One requisite, therefore, for that purpose was what a gentleman who had already addressed them, emphatically called "the sinews of war." But there was another equally essential. Any member of their Profession who paid attention to the attacks made upon them through the press, must be aware how easy it would be in many cases not merely to refute them, but expose their outrageous absurdity. They often consisted of misrepresentations so enormous, and blunders so ludicrous, as to excite only a smile from the professional reader, but still they would mislead even acute minds not familiar with the Profession, and on that account unprepared to detect fallacies quite palpable to those who were. They wanted therefore not only increased pecuniary means, but that the members of the Profession individually, as far as possible, should furnish accurate statements of facts within their own observation or knowledge, which would furnish by far the most powerful weapons for the defence of the Profession. Let it be once brought to be a contest between the weapons of misrepresentation and abuse on one side, and the weapons of fact and argument judiciously wielded on the other, and he well knew what would be the result of such a contest in this country. It was with especial reference to this subject that he had been requested to address them; and with the strong sense he had of its importance—with his conviction, indeed, that it was absolutely essential to the attainment of the object they had in view—the maintenance of the honour and interests of their Profession—he hoped that those present would carry back to their several neighbourhoods a determination strenuously to support the society, to endeavour to increase its numbers, and by every available means strengthen the hands of the committee in all its efforts, and more particularly enable it greatly to extend its efforts in the very important sphere to which it had been his special province to invite their attention. He begged to move—

"That attorneys and solicitors having been made the subject of systematic attacks by a portion of the press, it is important that the public mind should be disabused through the same channel; and that for this purpose this Society call upon the Profession to afford them increased support."

J. Case, Esq. (of Maidstone), seconded the resolution. He briefly expressed his approval of the society, and said he believed its effect upon legislation of past years had been exceedingly important.

The resolution was carried.

F. F. Brewer, Esq. (of Manchester), moved—

"That this meeting is glad to recognise the efforts which have been made by the Incorporated Law Society to improve the educational test of attorneys and solicitors; but they earnestly trust that further steps may be speedily taken to secure for the Profession a higher standard of general education."

The subject of an educational test of fitness to be articulated had frequently engaged the earnest and zealous attention of the committee, and during the past year various suggestions had been submitted to the Incorporated Law Society, it being considered that that body was peculiarly qualified to bring the question to a practical solution. Since the stamp duty and the duty on articles of clerkship had been reduced, by which means the facilities for entering the Profession had been increased, this question had become of still greater importance. No doubt the poor candidate should not be excluded simply because he was poor, but they must not allow their sympathy for worth by poverty distressed, make them forget that poverty was not a proof of worth. Let their candidates, whether rich or poor, be examined before persons especially appointed, and stand upon their merits. They might leave to the examiners to decide whether the examination should be on ancient classics and mathematics, or on a curriculum of a more general and practical character; but he thought the examination should precede clerkship, and should be made a test of fitness for articles. With such an examination they would have some guarantee as to the future success of the candidate.

J. Lewis, Esq. (Wrexham), said, the subject had been before the members for the last eight or ten years, that the Legislature had in a great degree conceded the necessity of it, by affording advantages to gentlemen who had taken a degree at the university. Whilst a classical education was necessary, it was not enough, and he hoped that ere long, gentlemen before they were articulated would produce certificates that they attended a course of lectures on all the various branches of physical science. After illustrating the great importance of such knowledge, Mr. Lewis said, he thought it must be obvious to every one that a mere pecuniary test was not at all satisfactory. Any man who could raise his 80*l.* could, if it were necessary, raise a larger sum, and therefore a pecuniary test could not be any evidence of respectability. He could recollect the time when the idea of solicitors undergoing any examination as to their legal fitness was laughed and sneered at, and in some instances it was said by members of the Bar that attorneys did not require a knowledge of law. They knew the reason of that. If an attorney did not know law, he must take a great many more counsel's opinions. Gentlemen of the Bar stood in an invidious position—a man who could not write his own name might be called to the Bar if he would pay his 100*l.*, and eat the requisite number of dinners, and then he might claim the exclusive privilege, which was not found in America, and which prevented solicitors from conducting their cases from the commencement to the termination. It was often annoying to hear barristers not only tinker, but actually maul, your case, and to feel that you had no alternative but to remain quiet, and afterwards take the blame of your client. He thought it was actually necessary

that candidates for the Profession should receive something more than a merely legal education, and he therefore felt that it devolved upon them to exert themselves to endeavour to bring the Legislature into the same way of thinking; and he hoped that before long, with the assistance of the Incorporated Law Society, they might have formed a code of rules which would secure those advantages. He begged to second the resolution, which was carried after some remarks by

The Chairman, who stated that the attention of the Incorporated Law Society had been anxiously devoted to the subject.

Mr. Field having taken the chair, R. Barr, Esq., of Leeds, moved in a very complimentary manner, and T. Burn, Esq., of Sunderland, seconded

"That the cordial thanks of this meeting be given to the Chairman for his excellent services in the chair this day, and for his constant devotion and zeal to the interests and honour of the Profession generally."

After the meeting above forty members dined together at five o'clock, at the White Horse Hotel; Mr. Shaw in the Chair. A good deal of interesting conversation took place upon the proposed educational test, and on the suggestion which had been made by Mr. Ryland, that at these meetings previously prepared papers should be read and discussed. This suggestion met with general approval, and a warm invitation was given by Mr. Unett, of Birmingham, to make that town the place of meeting next year. The party broke up soon after ten o'clock.

LAW OF ATTORNEYS.

TAXATION OF COSTS.—WHERE CERTIFICATE NOT FILED.—RESTRAINING ACTION AT LAW.

It appeared that on May 23, 1850, a client presented a petition to the Master of the Rolls for the taxation of the bill of costs of her solicitor, upon which the usual order was made, and a direction that no proceedings at law or otherwise should be commenced against her in respect of the bill pending the reference. The Master accordingly certified on August 30, 1850, but the amount of the bill as taxed was less by a sixth part than the bill delivered. The client died on Dec. 31, 1851, without having filed the certificate, and in July, 1852, her representatives tendered the amount as taxed to the solicitor, who refused to accept the same, and in the November following commenced an action against them for the amount

¹ We are indebted for this Report to *The Leeds Intelligencer* of 21st October, with a copy of which, accompanied by some corrections, we have been favoured.—ED.

of his bill after deducting the excess of receipts over payments. The Master of the Rolls, on Jan. 17, 1853, granted an injunction to restrain this action, and for the delivery up of documents, against which the solicitor now appealed.

Bruce, L. J., said,—"The taxation was completed in August, 1850, and the Master issued his certificate. The lady lived until the end of 1851. During this time—a year and six months—it appears that the certificate of the Master was not filed, but the solicitor did not require it to be filed or complained of its not having been filed, nor has he ever alleged that he was unaware of its nature, which he must be taken to have well known.

"It has been urged on his behalf, that by this omission the certificate became void; but I am clearly of opinion that it did not. It may very well be that until filing it no proceedings could be taken under it, or for the purpose of complaining of it. That is quite a different question. There is no pretence for the argument that the certificate was invalid by reason that it was not filed.

"The lady having died in December, 1851, without having paid this small amount [9*l.*] due from her, a tender, or substantially a tender, of that sum was, in the following July, made to the solicitor on behalf of her representative, her daughter, accompanied by a demand of her papers, which, on payment, he was bound to return. He refused to return them, upon the ground, as I understand—an utterly mistaken ground—that the taxation was invalid for the reason that I have before mentioned. Some months afterwards, still retaining the deeds and having declined to receive the money, he took the strange course, which is very greatly to be regretted, of bringing an action for the whole amount of his bill, as if no taxation had been had. Whether that was a contempt of the Court, I am not prepared to say, but this I will say, that it was a course which no solicitor ought to have taken,—that it was a course which a solicitor would be justly and highly censurable for advising or permitting a client to take. To take it on his own behalf and in his own case was still more censurable.

"A petition was presented at the Rolls, for the delivery of the deeds and for the stay of the action, and the Master of the Rolls, with perfect propriety, made the order with costs, but allowed the solicitor the 9*l.* due to him.

Considering that his Honour was dealing with a case which affected the general interests of society, and particularly the whole class of solicitors, I think that it would have been to forget what was due to the Court, to society, and to justice, not to make the order. I am not sure that I am doing right in not giving my voice for a stronger decision than merely saying, as I do—that the appeal ought to be dismissed with costs." *In re James Campbell*, 3 De G. M'N. & G. 585.

LAW OF COSTS.

OF SUIT, WHERE TRUSTEE DIVIDES ESTATE UNDER COUNSEL'S ADVICE.

THE trustee of a will, acting upon the opinions of two counsel, had distributed the whole estate according to a different view of the construction of the will to that which the Court, upon a claim, held the proper construction. He was ordered to pay the costs of the suit, as well as pay the amount of the share to a child who was entitled. *Boulton v. Beard*, 3 De G., M'N. & G., 608.

OF TEMPORARY INVESTMENT OF PURCHASE-MONEY OF LAND TAKEN FOR RAILWAY.

It appeared that the purchase-money of some settled land, taken under the powers of a railway act, was paid into Court, and that afterwards a contract was entered into for the investment of the money in land. A petition was subsequently presented for the temporary investment of the money in consols: *Held*, that the proceeding was not vexatious, and that the company must pay the costs. *In re Liverpool, &c., Railway Company*, 17 Beav. 392.

ANNUAL REGISTRATION OF ATTORNEYS.

REGULATIONS.

THE Forms of Declaration, under the 6 & 7 Vict. c. 73, may be had on application at the Office of the Incorporated Law Society, Chancery Lane.

The Members of the Profession are requested to be particular in filling them up, either by themselves, their partners, or their London Agents; and to send them to the office on as early a day as possible.

1. No Declaration can be acted upon which does not contain all the particulars required by the Act of Parliament.

2. Every Declaration must be delivered at

the Office six days before a Certificate can be granted.

3. No Certificate will be delivered out till Monday, November 20.

4. In the first six days commencing on Nov. 20, Certificates will be delivered only to such London Agents as shall in due time previously, have sent in the Declarations of themselves and their Country Clients, accompanied by a List thereof arranged in alphabetical order, and written on foolscap paper bookwise.

5. These six days will be appropriated among the London Agents, in the following order:—The Letters refer to the initial of the Agent's surname or that of the senior partner in the case of a Firm.

Those commencing with—

A, or B,	Nov. 20
C, D, E, or F,	21
G, H, I, or J,	22
K, L, M, N, O, or P,	23
Q, R, or S,	24
T, U, V, W, X, Y, or Z	25

6. On every day subsequent to November 25, the Certificates will be delivered to the rest of the Profession.

7. The Fee of 1*l.* 6*s.* fixed by the Act for issuing each Certificate is to be paid on taking the same away.

ROBERT MAUGHAM, *Secretary.*
October, 1854.

ARTICLED CLERKS' QUERIES.

EXAMINATION OF A MINOR.

Is there any rule of law which prevents an articled clerk from being examined before he has attained the age of 21; and if there be, is such rule ever relaxed when the clerk will be within one month of that age at the time of the examination, and the effect of strictly carrying out the rule would be to throw him over the Long Vacation?

T.

[The Examiners cannot certify that a minor is "fit and capable" to act as an attorney, and therefore they decline to examine persons under age, unless they will attain their majority during the Term in which the examination takes place. They are then examined *de bene esse*, and the certificates are delivered when they are of age, but it must be in the same Term, as the Examiners are changed each Term.—ED.]

LEGAL OBITUARY.

[Concluded from p. 487.]

THIS list comprises the names of solicitors and barristers who died since our former Obituary, page 207, *ante*, including the names

received by the Registrar of Attorneys during the present vacation. The names marked thus * were Members of the Incorporated Law Society.

Hobhouse, Right Hon. Henry, Keeper of her Majesty's State Papers, and one of the Ecclesiastical Commissioners for England, aged 78. He was called to the Bar at the Middle Temple Jan. 23, 1801, appointed Solicitor to the Customs in 1806, and Solicitor to the Treasury in 1812. He held the office of Under Secretary of State for the Home Department from June, 1817, to July, 1827. He was appointed Keeper of the State Papers in May, 1826, and sworn a Privy Councillor in June, 1828. Died April 13, 1854.

Holt, William, Solicitor, of Liverpool (firm Holt and Rowe). Admitted on the Roll Hilary Term, 1830. Died 1853.

Horner, Robert Ryder, Solicitor, of Gloucester. Admitted on the Roll Easter Term, 1839. Died April 15, 1853.

Hutchison, Andrew Kennedy, Solicitor, of 3, Furnival's Inn, Holborn (firm Hutchison and Boyd). Admitted on the Roll Trinity Term, 1812. Died Feb., 1853.

Ingle, Thomas, Solicitor, of Belper, Clerk to Trustees of Turnpike Roads, Perpetual Commissioner, Clerk to the County Court and Belper Gas Company. Admitted on the Roll Hilary Term, 1822. Died April 11, 1853.

Jackson, William Windale, Solicitor, of 2, Field Court, Gray's Inn, and Hammersmith, aged 41. Admitted on the Roll Easter Term, 1842. Died April 24, 1852.

James, Jehu, Solicitor, Secondary of London, aged 69. Admitted on the Roll Michaelmas Term, 1805. Died July 21, 1852.

Jameson, Hon. Robert Sym普森, Vice-Chancellor of Upper Canada. Called to the Bar at the Middle Temple, Nov. 28, 1823. Died August 1, 1854.

Jardine, Thomas, Solicitor, of Bolton-le-Moors. Admitted on the Roll Michaelmas Term, 1815. Died Nov. 5, 1853.

Jarvis, Edward Kern, Solicitor, of Hinchley, Perpetual Commissioner. Admitted on the Roll Hilary Term, 1827. Died Jan. 1, 1853.

Jennings, Thomas Robert, Solicitor, of Ever-shot. Admitted on the Roll Hilary Term, 1842. Died March 21, 1853.

Jennings, Joseph Crew, Solicitor, of Ever-shot. Admitted on the Roll Easter Term, 1830. Died March 23, 1854.

Johns, Henry William, Solicitor, of Blandford, Registrar of the Archdeaconry Court of Dorset, aged 76. Admitted on the Roll Michaelmas Term, 1798. Died May 26, 1854.

Johnson, Thomas Edward, Solicitor, of 58, Lincoln's Inn Fields. Admitted on the Roll Michaelmas Term, 1837. Died 1853.

Johnson, John, Solicitor, of 19, Cockspur Street, Pall Mall. Admitted on the Roll Michaelmas Term, 1809. Died 1853.

Johnstone, John, Solicitor, of Bishops Stortford. Admitted on the Roll Easter Term, 1834. Died 1853.

Jones, John, Solicitor, of Beaumaria. Admitted on the Roll Trinity Term, 1823. Died 1853.

Jones, Henry Julius, Solicitor, of 30, Bury Street, St. James. Admitted on the Roll Michaelmas Term, 1838. Died May, 1853.

Jones, John Alexander, Solicitor, of 9, Quality Court, Chancery Lane, aged 27. Admitted on the Roll Michaelmas Term, 1845. Died Jan. 28, 1852.

Keeling, William, Solicitor, of Newport, Salop. Admitted on the Roll Hilary Term, 1843. Died Aug. 6, 1854.

Mesall, Henry, Solicitor, of Chester, Perpetual Commissioner. Admitted on the Roll Trinity Term, 1820. Died Oct. 4, 1853.

Kewell, Wm., Solicitor, of 8, Angel Court, Throgmorton Street (firm Grogan and Kewell), aged 58. Admitted on the Roll Easter Term, 1823. Died July 30, 1852.

Key, John Algernon, Solicitor, of Halbeach, Lincolnshire (firm Sturton, Key, and King), aged 30. Admitted on the Roll Hilary Term, 1847. Died July 28, 1854.

Kingsford, Philip, Barrister-at-Law, of 1, Middle Temple Lane. Called to the Bar at the Middle Temple, Nov. 19, 1847. Died Sept. 3, 1854.

Kitsom, Frederick, Solicitor, Proctor, and Notary, of Exeter (firm Sanders and Kitsom). Admitted on the Roll Easter Term, 1841. Died June, 1853.

Knight, Henry, Solicitor, of 80, Basinghall Street. Admitted on the Roll Michaelmas Term, 1843. Died 1853.

Lamb, Henry, Solicitor, of Kettering. Admitted on the Roll Easter Term, 1812. Died Aug. 1852.

Lampitt, Edward, Solicitor, of Warrington. Admitted on the Roll Michaelmas Term, 1826. Died 1853.

Lane, John, Solicitor, of Goldsmiths' Hall, Foster Lane (firm Lane and Pridemore), Clerk to the Goldsmiths' Company. Admitted on the Roll Michaelmas Term, 1810. Died Jan. 16, 1852.

Langley, John Henry, Solicitor, of Cardiff. Admitted on the Roll Hilary Term, 1820. Died Dec., 1853.

Law, Charles John, Solicitor, of Oxford. Admitted on the Roll Trinity Term, 1840. Died Aug., 1853.

Lawrence, Juner Perry, Solicitor, of Cambridge, aged 34, Clerk to the Magistrates and to the Commissioners of Land and Assessed Taxes of the Division of Bottisham. Admitted on the Roll Hilary Term, 1837. Died Feb. 14, 1852.

Lediard, Samuel, Solicitor, of Cirencester, Perpetual Commissioner for Gloucester, Wilts, and Berks. Admitted on the Roll Trinity Term, 1828. Died 1852.

Lee, Thomas Eyre, Solicitor, of Birmingham (firm Lee, Penson, and Best), aged 62. Admitted on the Roll Michaelmas Term, 1812. Died May 20, 1852.

Leigh, Robert, Solicitor, of Kneets Oak, near Ilminster, Somersetshire. Admitted on the

Roll Hilary Term, 1836. Died May 23, 1852.

Liddell, Alexander, Solicitor, of Poalton-in-the-Fylds, Clerk to the Magistrates. Admitted on the Roll Trinity Term, 1824. Died Sept., 1853.

Livett, Andrew, Solicitor, Notary, and Perpetual Commissioner, of Bristol (firm A. J. and H. Livett). Admitted on the Roll Michaelmas Term, 1805. Died Sept. 30, 1852.

Lumley, Robert Wheatley, Solicitor, of 18, Carey Street (firm Lumley, Nicholl, and Smyth). Several years a member of the Council of the Incorporated Law Society. Admitted on the Roll Hilary Term, 1827. Died July, 1854.

Lush, James Wilmet, Solicitor, 33, Spital Square (firm Lash and Merceron), Chief Bailiff of the Tower of London, one of the Clerks to Lieutenantcy and the Commissioners of Land and Assessed Taxes for Tower Division. Admitted on the Roll Hilary Term, 1806. Died June 16, 1853.

Lutly, Beaumont Charles, Solicitor, of Dyers' Hall, College Street, Dowgate Hill, and Wandsworth, Surrey (firm Lutly and Bart), Clerk to the Dyers' Company, and to the Commissioners of Taxes for West Brixton. Admitted on the Roll Hilary Term, 1817. Died July, 1852.

Macaulay, Colin Campbell, Solicitor, of Leicester (firm Berridge and Macaulay). Admitted on the Roll Easter Term, 1823. Died Oct. 20, 1853.

Madden, Alexander Lloyd, Solicitor, of Worcester. Admitted on the Roll Michaelmas Term, 1861. Died Feb. 12, 1852.

Martin, Charles, Solicitor, of the Vintners' Hall, Upper Thames Street, Clerk of the Vintners' Company. Admitted on the Roll Trinity Term, 1815. Died Sept., 1852.

Matthews, John, Solicitor, and Perpetual Commissioner, of Oxford, aged 50. Admitted on the Roll Hilary Term, 1828. Died Aug. 25, 1854.

Medwyn, John Hay Forbes, Lord, formerly a Lord of Justiciary, aged 77. He was called to the Scottish Bar in 1799, was appointed Sheriff-depute of the County of Perth in 1807, Judge of the Court of Session in Jan., 1825, and Lord of Justiciary in 1830. Died July 25, 1854.

Meggy, Robert, Solicitor, of 34, Trinity Square, and 11, Three Crown Square, Southwark, aged 45. Admitted on the Roll Michaelmas Term, 1826. Died March 27, 1852.

Miller, Giles, Solicitor and Perpetual Commissioner, of Goodhurst (firm Miller and Hinds). Admitted on the Roll Michaelmas Term, 1817. Died 1853.

Millett, Charles, Solicitor, of Hindon, Wilts. Admitted on the Roll Trinity Term, 1790. Died Feb., 1854.

Millett, John Fortescue, Solicitor, of Marazion and Penzance, Cornwall, aged 48. Admitted on the Roll Trinity Term, 1828. Died June 29, 1852.

Minsall, Samuel, Solicitor, of Liverpool.

Admitted on the Roll Hilary Term, 1825. Died Oct., 1852.

**Molloy*, Charles, Solicitor, of 8, New Square, Lincoln's Inn. Admitted on the Roll Easter Term, 1820. Died May 12, 1852.

**Moore*, Samuel, Solicitor, of Castlegate, Nottingham, Clerk of the Peace for the Town, Clerk to Charity Trustees, and Perpetual Commissioner. Admitted on the Roll Hilary Term, 1835. Died Nov., 1852.

**Moorhouse*, Thomas, Solicitor, of Halifax, Yorkshire, aged 38. Admitted on the Roll Trinity Term, 1835. Died June 4, 1852.

**Morgan*, John, Solicitor and Perpetual Commissioner, of Llandoverly (firm Morgan and Evans). Admitted on the Roll Michaelmas Term, 1817. Died 1853.

**Mortimer*, Thomas Hill, Solicitor, of 4, Albany Court Yard, Piccadilly. Admitted on the Roll Nov. 21, 1842. Died March 22, 1853.

**Moseley*, Thomas, Solicitor, of 13, Bedford Street, Covent Garden, Vestry Clerk and Clerk to Committee of Management of St. Paul, Covent Garden. Admitted on the Roll, Easter Term, 1827. Died Nov. 26, 1852.

**Mott*, Thomas Samuel, Solicitor and Perpetual Commissioner, of Much Hadham, Herts (firm Mott, Gayton, and Mott), aged 69. Admitted on the Roll Michaelmas Term, 1806. Died June 14, 1854.

**Mousley*, William Eaton, Solicitor and Perpetual Commissioner, of Derby (firm Mousley and Son). Admitted on the Roll Trinity Term, 1811. Died Jan. 6, 1853.

**Mullins*, Edward, Solicitor, of 15, Tokenhouse Yard, Lothbury (firm Mullins and Pad-dison), Joint Solicitor and Secretary to the Royal British Bank, and to the Irish Peat Company, and Notary. Admitted on the Roll Michaelmas Term, 1833. Died Dec. 11, 1853.

**Nash*, James, Solicitor, of Henley on Thames, Admitted on the Roll Hilary Term, 1833. Died Nov. 5, 1853.

**Newbold*, John, Solicitor, of 41, Bedford Row (firm Sharp, Field, Jackson, and Newbold), aged 46. Admitted on the Roll Easter Term, 1827. Died May 4, 1852.

**Nicholson*, Henry, Solicitor, of 8, Furnival's Inn, Holborn. Admitted on the Roll Michaelmas Term, 1845. Died 1853.

**Nicholson*, George, Solicitor, of 4, Old Palace Yard, Westminster. Admitted on the Roll Hilary Term, 1815. Died 1853.

**Nicholson*, James, Solicitor, of 90, New Bond Street. Admitted on the Roll Trinity Term, 1825. Died March, 1853.

**Nicholson*, Richard, Solicitor, of Ripon, Town Clerk, Clerk to the Magistrates, and to the Ure Navigation Company and Trust of Pateley Bridge and Hewick Roads, and Perpetual Commissioner. Admitted on the Roll Hilary Term, 1814. Died 1853.

**Norris*, John, Solicitor, of Manchester (firm John and William Norris). Admitted on the Roll Trinity Term, 1822. Died 1853.

**Oliver*, John Bass, Solicitor, of 31, St. Swithin's Lane, London, and 3, Rue Brederode, Brussels, aged 38 (firm Oliver and Wil-

kins). Admitted on the Roll Michaelmas Term, 1839. Died July 24, 1854.

**Osborne*, Robert, Solicitor, of Bristol, aged 46 (firm Osborne, Ward, Knapp, and Fellows). Admitted on the Roll Hilary Term, 1833. Died June 1, 1854.

**Ostler*, William, Solicitor, of Grantham, Perpetual Commissioner (firm Ostler, Sons, and Cochrane). Admitted on the Roll Easter Term, 1793. Died 1853.

**Page*, William Sagon, Solicitor, of Scarborough. Admitted on the Roll Michaelmas Term, 1822. Died 1853.

**Palmer*, Edward Seymour, Solicitor, of Birmingham (firm W. & E. S. Palmer). Admitted on the Roll Easter Term, 1841. Died 1853.

**Palmer*, James, Solicitor, of Ormakirk. Admitted on the Roll Easter Term, 1805. Died Jan. 1854.

**Palmer*, Richard, Solicitor, of Preston. Admitted on the Roll April 4, 1794. Died Dec. 6, 1852.

**Parr*, Robert Henning, Solicitor, of Poole and Packstone, Dorset (firm R. H. and R. W. Parr), aged 56, formerly Town Clerk of Poole. Admitted on the Roll Trinity Term 1821. Died Jan. 7, 1852.

**Parry*, James, Solicitor, of Newcastle Emlyn. Admitted on the Roll Michaelmas Term, 1830. Died 1853.

**Payne*, John, Solicitor, of Milverton, Clerk to the Magistrates for Division of Milverton and Lydeard, and Clerk to Commissioners of Taxes for Bishop's Lydeard Division, and Perpetual Commissioner. Admitted on the Roll Easter Term, 1819. Died Oct. 3, 1853.

**Peren*, Henry Burchall, Solicitor, of South Petherton (firm Hayward and Peren). Admitted on the Roll Trinity Term, 1843. Died Aug. 8, 1852.

**Peter*, Simon, Solicitor, of Liskeard (firm Childs and Peter). Admitted on the Roll Easter Term, 1845. Died March 11, 1853.

**Petty*, George, Solicitor, of Stockton-on-Tees, Durham, Assistant Clerk to the County Court. Admitted on the Roll Easter Term, 1836. Died Feb. 15, 1852.

**Pirie*, William, Barrister-at-Law, of 4, Old Square, Lincoln's Inn. Called to the Bar at Lincoln's Inn, Jan. 28, 1841. Died Sept. 15, 1854.

**Price*, John Dutton, Solicitor, of 7, Sion Row, Twickenham. Admitted on the Roll Michaelmas Term, 1826. Died Oct. 1852.

**Pringle*, William, Solicitor, of 3, King's Road, Bedford Row, Commissioner of Oaths in Chancery (firm Pringle, Shum, Wilson, and Crossman). Admitted on the Roll Hilary Term, 1819. Died June 4, 1854.

**Ramsden*, Thomas, Solicitor, of Wakefield. Admitted on the Roll Easter Term, 1839. Died 1852.

**Raven*, John, Solicitor, of Hawkshead, Ambleside, and Bowness (firm Slater and Raven), joint Steward of the Manor of Bayesbroune, and Clerk to the Magistrates at Hawkshead. Admitted on the Roll Michaelmas Term, 1847. Died 1853.

Rawlings, Benjamin William, Solicitor, of 16, Furnival's Inn, Holborn, and Romford, Vestry Clerk of Romford. Admitted on the Roll Hilary Term, 1838. Died 1853.

Raynar, John, Solicitor, of Leeds (firm J. and W. T. Raynar). Admitted on the Roll Michaelmas Term, 1808. Died Feb. 16, 1853.

Reed, Henry, Solicitor, of Bridgwater. Admitted on the Roll Michaelmas Term, 1809. Died March, 1853.

Reynolds, John Hamilton, Solicitor, of Newport, Isle of Wight, Clerk of the County Court. Admitted on the Roll Michaelmas Term, 1822. Died 1853.

**Robinson*, James, Solicitor, of 7, Queen's Street Place, Upper Thames Street, City (firm J. and C. Robinson), aged 63. Admitted on the Roll Trinity Term, 1814. Died Aug. 4, 1854.

Robinson, George, Solicitor, late of Wellingborough, then of Hastings. Admitted on the Roll Trinity Term, 1849. Died Jan. 26, 1854.

**Roe*, James, Solicitor, of the Hythe, Stains. Died 1853.

**Roe*, Thomas, Solicitor, Temple Chambers, Falcon Court, Fleet Street. Admitted on the Roll Hilary Term, 1809. Died Dec. 6, 1853.

Rogers, Robert, Solicitor, of 3, Union Court, Old Broad Street, City. Admitted on the Roll Hilary Term, 1813. Died June 24, 1854.

Rogers, Samuel, Solicitor, of 2, Bank Chambers, Lothbury. Admitted on the Roll Hilary Term, 1832. Died 1853.

Rose, John, Solicitor, of the Queen's Bench Office, aged 71. Admitted on the Roll Michaelmas Term, 1826. Died March 13, 1852.

Rowley, Alexander Butler, Solicitor, of Manchester (firm A. B. and J. C. Rowley), aged 48. Admitted on the Roll Trinity Term, 1829. Died July 23, 1854.

Rush, John Brook, Solicitor, of Erith. Admitted on the Roll Michaelmas Term, 1840. Died Oct., 1853.

Russell, Thomas Adams, Solicitor, of Alnwick, Coroner for Northumberland (firm T. A. and J. Russell). Admitted on the Roll Hilary Term, 1814. Died May, 1853.

Rycroft, Dawson, Solicitor, of Idle and Bradford, Yorkshire. Admitted on the Roll Michaelmas Term, 1840. Died May, 1853.

Salthouse, John, Solicitor, of Poulton, in the Fylde. Admitted on the Roll Aug. 16, 1838. Died June, 1852.

Sanders, Samuel Harford, Solicitor, of Exeter. Admitted on the Roll Trinity Term, 1844. Died Nov. 1853.

Sangster, Martin, Solicitor, of 31, St. Swithin's Lane, City. Admitted on the Roll Michaelmas Term, 1827. Died 1853.

Sawyer, John, Solicitor, of Edmonton and Enfield, aged 79. Clerk to the Enfield Union, and Superintendent Registrar, Clerk to the Petty Sessions, Assistant Clerk to the Commissioners of Taxes for the Hundred, Clerk to the Board of Inspectors for Lighting, and Deputy Steward of the Manor. Admitted on the Roll Michaelmas Term, 1828. Died May 26, 1852.

Score, Charles Call, Solicitor, of 43, Carey

Street, Lincoln's Inn. Clerk to Commissioners of Taxes for the districts of Duchy of Lancaster and St. Clement's, and Clerk to Paying Board of St. Clement's Danes. Admitted on the Roll Michaelmas Term, 1847. Died 1853.

**Scott*, Charles Davison, Solicitor, of 7, Furnival's Inn. Admitted on the Roll Hilary Term, 1827. Died August 25, 1852.

Scruton, Walter, Solicitor, of Durham, aged 52. Deputy Clerk of the Peace. Admitted on the Roll Michaelmas Term, 1820. Died March 12, 1852.

Sharman, Alexander, Solicitor, of Bedford (firm Sharman and Turnley) Admitted on the Roll Michaelmas Term, 1824. Died 1853.

**Sheffield*, William, Solicitor, of 68, Old Broad Street, City (firm Isaac and William Sheffield). Admitted on the Roll Trinity Term, 1828. Died Sept. 7, 1852.

Short, Francis, Solicitor, of Bristol (firm Short and Strickland). Admitted on the Roll Michaelmas Term, 1817. Died Feb., 1853.

Shotter, James, Solicitor, of Farnham, Steward of Manor of Farnborough (firm Shotter and Evans). Admitted on the Roll Hilary Term, 1794. Died July 5, 1852.

**Simpson*, William Robert, Solicitor, of Red Lion Street, Clerkenwell, aged 76. Admitted on the Roll Easter Term, 1807. Died March 6, 1852.

Skegg, William Harper, Solicitor, of 39, Brudenell Place, New North Road, Hoxton. Vestry Clerk of St. John, Hoxton, and Registrar of Births and Deaths for Hoxton New Town district. Admitted on the Roll Michaelmas Term, 1815. Died Oct., 1852.

Smith, George, Solicitor, of Bath. Admitted on the Roll Michaelmas Term, 1822. Died July, 1853.

Sole, Edward, Solicitor, of Devonport, Agent to West of England Insurance Company (firm Edward and Henry Sole). Admitted on the Roll Easter Term, 1817. Died August, 1853.

Sorby, James, Solicitor, of Sheffield, Yorkshire, aged 58. Admitted on the Roll, Easter Term, 1816. Died Aug. 4, 1852.

Spraggett, George, Solicitor, of Southam, Warwickshire (firm Welchman and Spraggett), aged 27. Admitted on the Roll Michaelmas Term, 1846. Died May 9, 1852.

**Stafford*, William, Solicitor, of 13, Buckingham Street, Strand (firm Stafford, Gee, and Stafford), aged 55. Admitted on the Roll Michaelmas Term, 1817. Died Jan. 6, 1852.

**Stevenson*, John, Solicitor, 3, King's Road, Bedford Row (firm Pringle, Stevenson, and Shum). Admitted on the Roll Easter Term, 1836. Died Oct. 28, 1852.

**Stone*, Joseph, Solicitor, of Dorchester, Town Clerk and Clerk of County Court, Treasurer of Dorsetshire, and Steward of Royal Manor of Portland (firm Stone and Symonds). Admitted on the Roll Hilary Term, 1818. Died Dec. 29, 1853.

Sutcliffe, John Knapp, Solicitor (firm Sutcliffe and Sumners), of 5, New Bridge Street, Blackfriars. Admitted on the Roll, Hilary Term, 1815. Died 1852.

Sweetlove, David Tanner, Solicitor, of Maidstone. Admitted on the Roll Easter Term, 1811. Died Oct., 1852.

Teague, James Alexander, Solicitor, of 3, Mayfield Terrace, Dalston. Admitted on the Roll Easter Term, 1833. Died Feb. 14, 1852.

Teale, Edward John, Solicitor, of Leeds, Registrar of Archdeaconry of Craven, and Clerk to West Riding Magistrates for the Wapentake of Skyrack (firm E. J. and T. G. Teale). Admitted on the Roll Trinity Term, 1824. Died 1853.

**Thomas*, William, Solicitor, of 16, Grove Place North, Brixton. Admitted on the Roll Michaelmas Term, 1817. Died Dec. 1, 1852.

Thomas, Edmund, Solicitor, of Worcester, Clerk to Magistrates of Worcester Division (firm Thomas and Roberts). Admitted on the Roll Michaelmas Term, 1844. Died July, 1852.

Thompson, William, Solicitor, of Stamford (firm Thompson, Son, and Co.) Admitted on the Roll Michaelmas Term, 1795. Died June 17, 1853.

Thorney, John, Solicitor, of Hull, Coroner for Hull, Superintendent Registrar of the Hull District, and Solicitor to the Hull Glass Company (firm J. and J. J. Thorney). Admitted on the Roll Easter Term, 1825. Died Sept. 1853.

Tiffen, John, Solicitor, of Wigton (firm Studholme and Tiffen). Admitted on the Roll Michaelmas Term, 1840. Died Jan. 16, 1853.

Todd, Joshua, Solicitor, of Manchester. Admitted on the Roll Michaelmas Term, 1833. Died 1853.

Towne, John Edward, Solicitor, of Wrexham, Agent to Manchester Fire and Pelican Life Insurance Office. Admitted on the Roll Trinity Term, 1850. Died Dec. 3, 1853.

Tribe, Edward, Solicitor, of 14, Barge Yard Chambers, Bucklersbury. Admitted on the Roll Hilary Term, 1828. Died 1853.

Turnbull, John, Solicitor, of Threepwood House, Haydon Bridge, Northumberland. Admitted on the Roll Hilary Term, 1839. Died June 11, 1854.

Turner, William, Solicitor, of 32, Red Lion Square. Admitted on the Roll Michaelmas Term, 1854. Died July 9, 1852.

Twiston, Sir T. E. M., Bart., late Registrar of the Supreme Court at Calcutta, aged 64. Called to the Bar at Lincoln's Inn, Feb. 6, 1818. Died April 13, 1854.

Twigg, Francis, Solicitor, of Burslem. Admitted on the Roll Michaelmas Term, 1849. Died Feb. 26, 1853.

Twist, John, Solicitor, of Coventry, Vestry Clerk of Trinity Church, Coventry, and Steward of the Manor of Barkeswell (firm Woodcock, Twist, and Son). Admitted on the Roll Michaelmas Term, 1800. Died 1853.

Turner, Robert Ridgway, Solicitor, of Manchester. Admitted on the Roll Easter Term, 1835. Died Jan. 25, 1852.

Viner, Robert, Solicitor, of Bath. Admitted on the Roll Hilary Term, 1833. Died August, 1853.

Wakeman, James, Solicitor, of Worcester. Admitted on the Roll Trinity Term, 1820. Died Jan., 1853.

Wall, William, Solicitor, of Brentwood, Clerk to the Subdivisional Meeting of Lieutenancy, and Joint Clerk to Commissioners of Assessed and Land Taxes. Admitted on the Roll Nov. 29, 1793. Died July, 1853.

**Walton*, William, Solicitor, of Girdlers' Hall, 39, Basinghall Street, Clerk to the Company. Admitted on the Roll Hilary Term, 1819. Died March 1, 1852.

Ward, William, Solicitor, of Leeds, Solicitor to the Leeds Banking Company (firm W. and W. S. Ward). Admitted on the Roll Trinity Term, 1810. Died Nov. 25, 1852.

**Warren*, Augustus, Solicitor, of 57, Great Russell Street, Bloomsbury, one of the Council of the Incorporated Law Society (firm Bray, Warren, and Harding). Admitted on the Roll Michaelmas Term, 1812. Died Oct. 26, 1853.

Watkins, James Kyrke, Solicitor, of Bolton-le-Moors. Clerk to Subdivision Meetings of Lieutenancy and Commissioners of Land and Assessed Taxes (firm Watkins and Son). Admitted on the Roll Hilary Term, 1821. Died April, 1853.

Watson, John, of 6, Park Place, Paddington Green, Solicitor, aged 65. Admitted on the Roll Hilary Term, 1820. Died Aug. 16, 1854.

Webster, John, Solicitor, of Lancaster. Admitted on the Roll Trinity Term, 1797. Died Feb. 15, 1852.

Weddell, David William, Solicitor, of 22, Brownlow Street, Holborn, aged 69. Admitted on the Roll Easter Term, 1809. Died July 8, 1852.

**West*, Thomas, Solicitor, of 77, Lower Grosvenor Street, Grosvenor Square. Admitted on the Roll Michaelmas Term, 1796. Died Nov. 3, 1852.

Westwood, William, Solicitor, of 8, Gray's Inn Square (firm Chautier and Westwood), aged 34. Admitted on the Roll Trinity Term, 1841. Died Nov. 28, 1852.

Weymouth, Isaac, Solicitor, of Kingsbridge. Admitted on the Roll Trinity Term, 1806. Died June, 1852.

Whitaker, Alfred, Solicitor, of Frome. Admitted on the Roll Hilary Term, 1822. Died 1852.

Wheeler, John Rogers, Solicitor, of Wokingham, Berkshire. Admitted on the Roll Michaelmas Term, 1820. Died April, 1852.

White, William, Solicitor, of Moreton Hampstead. Admitted on the Roll Hilary Term, 1837. Died 1853.

Whiston, Henry Wilmott, Solicitor, of Derby (firm Whiston and Sons). Admitted on the Roll Hilary Term, 1844. Died May, 1853.

Wilks, John, Solicitor, of 3, Finsbury Square. He was the son of the late Rev. Matthew Wilks, of Whitfield's Tabernacle, Moorfields, and was admitted on the King's Bench Roll in Hilary Term, 1800, and carried on business first at 41, Hoxton Square, and afterwards at 18, Finsbury Place. He held the offices of

vestry clerk and clerk to the trustees for lighting, watching, paving, &c., of St. Luke, Old Street, and retired from practice in the year 1838. For many years he was Secretary to the Protestant Society and to the Royal Institution for the Education of the Poor. Died Aug. 25, 1854. "Although," says the *Morning Advertiser*, "a Nonconformist by persuasion, Mr. Wilks was never very prominent in the public measures with which his community was identified. He, nevertheless stood nobly forth in behalf of the principles of civil and religious liberty in connexion with the Society for the Protection of Religious Liberty. At a period when the friends of popular education were few and feeble, Mr. Wilks took a prominent part in the foundation of the Cowper Street Schools, Finsbury, for the instruction of a thousand children on the Lancasterian principle, which have since been known as the Royal British Institute, Cowper Street. Mr. Wilks was a descendant of that excellent man and amiable poet, Shenstone. In his earlier days he used to delight crowded audiences by his very eloquent harangues at the anniversaries of the Society for the Protection of Civil and Religious Liberty, when the advocacy of freedom was by no means so popular as it now is. The deceased gentleman was three times returned as a Member of Parliament for Boston, and in his seat in the House of Commons he was always found to advocate those great principles of ecclesiastical and civil freedom which he had advocated in social life." Mr. Wilks was in his 80th year at the time of his death, having for several years survived both his sons, John and Rowland, who were members of the Profession. His remains were interred, on September 1, in Kensal Green Cemetery.

* *Williams, William*, Solicitor, of 31, Alfred Place, Bedford Square. Admitted on the Roll Hilary Term, 1832. Died June 30, 1852.

Willis, Charles, Solicitor, of Cranbrook, Coroner for Kent (firm Willis and Neve). Admitted on the Roll Trinity Term, 1811. Died April, 1839.

Wilson, Isaac, Solicitor, of Northallerton, Yorkshire, aged 30. Admitted on the Roll Easter Term, 1844. Died June 22, 1854.

Woodroffe, Henry, Solicitor (formerly Henry Chester), of 1, Church Row, Newington Butts, and Poyle, Surrey (firm Chester and Sons). Admitted on the Roll Trinity Term, 1808. Died July 22, 1854.

* *Wratislaw, William Ferdinand*, Solicitor, of Rugby (firm Wratislaw and Sons). Admitted on the Roll Michaelmas Term, 1810. Died May, 1853. (See pedigree, ante, vol. 37. pp. 185, 206).

Wright, William Harding, Solicitor, of 28, Essex Street, Strand (firm Wright and Kingsford). Admitted on the Roll Hilary Term, 1831. Died Nov. 13, 1853.

Wright, Edward, Solicitor, of Richmond, Yorkshire, Clerk to Trustees of Borebridge and Piersbridge and Richmond to Lacy Cross, &c., Turnpike Roads (firm E. & T.

Wright). Admitted on the Roll Easter Term, 1843. Died 1853.

Young, Thomas, sen., Solicitor, of 29, Mark Lane (firm Young and Son). Admitted on the Roll Michaelmas Term, 1815. Died Nov. 9, 1852.

LIST OF LOCAL AND PERSONAL ACTS.

17 & 18 VICT.

[Concluded from p. 491.]

153. An act to enable the Eastern Counties Railway Company to enlarge and improve their Goods Station in the Parish of Saint Matthew Bethnal Green, in the County of Middlesex.

154. An act to enable the granting Building Leases of Parts of the Camden Town Cemetery belonging to the Parish of Saint Martin in the Fields not heretofore used for the Purpose of Interment, and for other purposes.

155. An act to enable the Caledonian Railway Company to make certain Branch Railways and other Works in the County of Lanark; and for other purposes.

156. An act for altering the Lines authorised by the Caledonian Railway (Lesmahagow Branches) Act, 1851, and for otherwise amending that Act.

157. An act to confer further Powers on the Dukinfield Gas Company.

158. An act for enabling the South Wales Railway Company to acquire additional Land at Swansea, and for enlarging the Powers of Lease or Sale to and Contribution by the Great Western Railway Company, and for authorising Arrangements between the South Wales Railway Company and the Vale of Neath Railway Company, and for other purposes.

159. An act for the Improvement of the Borough of Bolton, and for other purposes, and of which the Short Title is "Bolton Improvement Act, 1854."

160. An act for making a Railway from the Leeds, Bradford, and Halifax Junction Railway, near Leeds, to Wakefield all in the West Riding of the County of York, to be called "The Bradford, Wakefield, and Leeds Railway;" and for other purposes.

161. An act for the Improvement and Regulation of the Town of Lowestoft, and the Parishes of Lowestoft and Kirkley, otherwise Kirtley, in the County of Suffolk, and for other purposes.

162. An act to enable the Leeds, Bradford, and Halifax Junction Railway Company to construct a Railway in extension of and to alter the Levels of Part of their Railway from Gildersome Street to East Ardsley in the West Riding of the County of York; and for other purposes.

163. An act for the better paving, draining, lighting, cleansing, and otherwise improving the Parish of West Bromwich, in the County

of Stafford, and for constructing Cemeteries there, and for making, maintaining, and regulating Markets and Market Places therein; and for other purposes.

164. An act to confer additional Powers on the York, Newcastle, and Berwick Railway Company for constructing Docks at Jarrow Slake, and a Branch Railway thereto; and to enable the Dean and Chapter of Durham to appropriate a portion of the Money payable to them for the Purchase of Lands for the same to the Endowment of a Church; and for other purposes.

165. An Act to repeal the Act for more effectually repairing and maintaining the Turnpike Road from Chapel-en-le-Frith to or near to Enterclough Bridge in the County of Derby, and other Roads therein-mentioned, in the County of Derby and in the County Palatine of Chester; and to make other Provisions in lieu thereof.

166. An act to re-incorporate the Patent Solid Sewage Manure Company, and to extend its Powers.

167. An act for supplying with Gas the Townships of Farnworth and Kearsley in the County Palatine of Lancaster.

168. An act to enable the Bangor and Caernarvon Railway Company to raise additional Capital, and to authorise the Sale or Lease of the said Company's Railway to the Chester and Holyhead Railway Company.

169. An act for the Provision, Regulation, and Maintenance of County Industrial Schools in Middlesex.

170. An act for the Embankment, Reclamation, and Drainage of Lands in the Bay of Bannow in the County of Wexford.

171. An act to amend the Acts relating to the Ambergate, Nottingham, and Boston and Eastern Junction Railway Company, and to authorise the Reduction and Regulation of and certain arrangements as to the Capital of the said Company; and for other purposes.

172. An act for more effectually draining certain Fen Lands and Wet Grounds called "The Great West Fen," in the Parish of Hilgay in the County of Norfolk.

173. An act for more effectually repairing the Road from Stourbridge in the County of Worcester to Bridgenorth in the County of Salop.

174. An act to enable the Shrewsbury and Hereford Railway Company to lease their Undertaking.

175. An act to enable the Dublin and Wicklow and the Dublin and Kingston Railway Companies to alter certain existing Contracts therein mentioned; and for other purposes.

176. An act for making a railway from the Town of Inverness to the Town of Nairn.

177. An act to consolidate the several Acts relating to the Port and Harbour of Londonderry; for the Improvement of the Navigation of the Lough and River of Louth Foyle; and to authorise the Construction of a uniform Line of Quays, Docks, and other Works.

178. An act for the more effectual Drainage

and Improvement of certain Lands in the Wapentake of Ouse and Derwent in the East Riding of the County of York, and for other purposes.

179. An act to reduce the Capital and define the Undertaking of the Shropshire Union Railways and Canal Company.

180. An act for making a Railway from the Town of Wells to join the Norfolk Railway at Fakenham, to be called "The Wells and Fakenham Railway."

181. An act to enable the Local Board of Health for the Township of Darlington to supply Gas and Water within their District, and to purchase the Works of the Darlington Gas and Water Company; to establish and regulate Markets and Slaughter-houses, and a Public Park to construct Sewage Works; and raise Money; and for other purposes.

182. An act for vesting the Ardrossan Railway in the Glasgow and South-western Railway Company, and for other purposes.

183. An act for transferring to the Mayor, Aldermen, and Burgesses of the Borough of Blackburn all the Powers and Property now vested in "The Blackburn Improvement Commissioners," and certain Powers and Property by the Private Act of the 4th and 5th years of the reign of her present Majesty, chapter 46, vested in the Overseers of the Poor of the Township of Blackburn, authorising the Corporation to purchase the Property of the Blackburn Waterworks' Company, and conferring on them further Powers for the Improvement and Regulation of the Borough; and for other purposes.

184. An act for vesting in the Caledonian Railway Company certain Portions of the Undertaking of the General Terminus and Glasgow Harbour Railway Company.

185. An act to enable the Newport Dock Company to construct a new Dock and other Works; and for other purposes.

186. An act to enable the Portsmouth Railway Company to make certain alterations in the Line and Levels of their Railway, and to extend their said Line from Godalming to Shalford; and for other purposes.

187. An act to authorise the Great North of Scotland Railway Company to divert their Railway, and to make a short Branch to the Victoria Docks at Aberdeen, to enter into Arrangements with the Aberdeen Harbour Commissioners and the Aberdeen Railway Company with respect to a Tramway to connect the Two Railways; and for other purposes.

188. An act for the more effectual Drainage and Improvement of certain Lands in the Parish of Methwold in the County of Norfolk, and for other purposes.

189. An act for making a Railway from the South Devon Railway near Plymouth to Tavistock, with a Branch, to be called "The South Devon and Tavistock Railway," and for other purposes.

190. An act for incorporating and regulating a Company to be called "The Royal Conical Flour Mill Company," and to enable the said

Company to purchase, work, and use certain Letters Patent; and for other purposes.

191. An act to enable the Newport and Pill-gwenly Waterworks Company to increase and extend their Supply of Water, and to construct new Works; and for other purposes.

192. An act for authorising Arrangements with respect to the South Reserve at Birkenhead, and for other purposes, and of which the Short Title is "The Birkenhead Dock Trustees Act, 1854."

193. An act for making a Railway from Rhymney to a Point of Junction with the Newport, Abergavenny, and Hereford Railway, near Bedllewyn, with a Branch up the Bargoed Rumney Valley, to be called "The Rhymney Railway," and for other purposes.

194. An act to enable the North Staffordshire Railway Company to make a Railway from Stoke-upon-Trent to Congleton, with Branches therefrom.

195. An act to repeal, alter, amend, and extend some of the Powers and Provisions of "The Tees Conservancy and Stockton Dock Act, 1852," and for other purposes relating to the Conservancy of the Tees.

196. An act for making a Turnpike Road from Garth-Penbryn to Adwyddu in the County of Merioneth, with a Bridge over the Estuary of Traethbach in the said County.

197. An act to incorporate a Company for the purpose of lighting with Gas the Parishes of Tormoham and Saint Mary Church, in the County of Devon.

198. An act for transferring to a Company the Powers vested in the Commissioners under "The North Shields Quay Act, 1851."

199. An act for making a Railway from the Town and Royal Burgh of Selkirk to the Hawick Branch of the North British Railway, about a Mile Southwards from the Galashiels Station of the said Branch; and for other purposes.

200. An act for making a Railway from the London and North Western Railway, near Stockport, to Dieley and Whaley Bridge, all in the County of Chester; and for other purposes.

201. An act for authorising the Transfer to the London and North Western Railway Company of the Haydon Square Branch of the London and Blackwall Railway, and for other purposes; and of which the Short Title is "The London and North Western Railway Act, 1854."

202. An act for enabling the Great Western Railway Company to make a Branch Railway to connect the Berks and Hants Railway with the Main Line of the Great Western Railway near Reading; for extending the Time for Completion of Parts of the Wilts, Somerset, and Weymouth Railway, and for reviving the Powers for Purchase of Land for, and for completing other Portions of that Railway; and for other purposes.

203. An act for limiting the Liability of the Shareholders in the Electric Telegraph Company, and for granting additional Powers to such Company.

204. An act for determining the existing Lease of the West London Railway to the London and North Western Railway Company, and for enabling the last-mentioned Company and the West London Railway Company to enter into fresh Arrangements for the Sale or Lease of the Undertaking of the West London Railway Company to the London and North Western Railway Company, and for the Settlement of all Disputes between the said Companies; and for other purposes.

205. An act for making a Railway from the Parish of Saint John the Evangelist in the City and Liberty of Westminster to Clapham in the County of Surrey, with a Branch from such Railway to join the authorised Line of the West End of London and Crystal Palace Railway at Long Hedge Farm in the Parish of Saint Mary Battersea in the County of Surrey.

206. An act to extend the Powers of the Cork and Waterford Railway Company, and to enable them to abandon Part of their Railway to Waterford, and the Branch to Tranmore; and for other purposes.

207. An act to alter the Lines and Levels of the Stratford-upon-Avon and Stourbridge Branches of the Oxford, Worcester, and Wolverhampton Railway; to construct certain Branch Railways and Works connected therewith; to amend the Acts relating to the Oxford, Worcester, and Wolverhampton Railway Company; and for other purposes.

208. An act to authorise Agreements between the Direct London and Portsmouth Railway Company and the Portsmouth Railway Company, and for winding up the Affairs of the Direct London and Portsmouth Railway Company.

209. An act for enabling the Oxford, Worcester, and Wolverhampton Railway Company to construct a Branch Line of Railway to the Town of Chipping Norton in the County of Oxford, and for regulating the Working and Use of the same by such Company.

210. An act to enable the West End of London and Crystal Palace Railway Company to make a Railway from Norwood to Bromley and Farnborough, and for other purposes.

211. An act to dissolve the York and North Midland and Leeds Northern Railway Companies, and to vest their Undertakings in the York, Newcastle, and Berwick Railway Company, to be thenceforth called "The North Eastern Railway Company," and to alter the Constitution of that Company, and to authorise working Arrangements with the Malton and Driffield Junction Railway Company, and the Amalgamation of that Company with such United Company; and for other purposes.

212. An act for making a Railway from the Newcastle-upon-Tyne and Carlisle Railway, at or near Hexham in the County of Northumberland, to or near the Belling in the Parish of Falstone in the same County, to be called "The Border Counties' Railway (North Tyne Section);" and for other purposes.

213. An act for relieving the Ratcliff Gas-light and Coke Company, and their Servants

and Agents, from certain Penalties and Penal Actions.

214. An act to authorise Working Arrangements between the Ambergate, Nottingham, and Boston, and Eastern Junction Railway Company and the Great Northern Railway Company, or lease or sale to the last named Company.

215. An act for making a Railway from the London and South Western Railway at Salisbury to Yeovil, and to form a Junction with the Railways at Yeovil of the Great Western and Bristol and Exeter Railway Companies respectively; and for other purposes.

216. An act to repeal and amend the Act for incorporating the British Guarantee Association, and to make further provisions as to the Management and Regulation thereof.

217. An act to transfer the Paisley Waterworks to the Magistrates and Council of Paisley, and to enable them to construct additional Works for supplying Paisley, Johnstone, and Places adjacent, with Water.

218. An act for making a Railway from the South Wales Railway at or near the Borough of Carmarthen to the Town of Newcastle Emlyn, with a view of being hereafter extended to the Town and Harbour of Cardigan; and for other purposes.

219. An act to repeal an "Act for better regulating the Poor within the City of Oxford," and to grant further and more effectual Powers in lieu thereof; and also to provide for rating to the Relief of the Poor certain Hereditaments within the University of Oxford.

220. An act for authorising and confirming Arrangements and Agreements between the Eastern Counties Railway Company and all or any of the Norfolk, the Eastern Union, the East Anglian, and the Newmarket Railway Companies, and for other purposes; and of which the Short Title is "The Eastern Counties, and the Norfolk, the Eastern Union, the East Anglian, and the Newmarket Railways Act, 1864."

221. An act to alter and extend the North Metropolitan Railway, and to consolidate and amend the provisions relating thereto.

222. An act to authorise the Consolidation into One Undertaking of the Great Western, the Shrewsbury and Birmingham, and the Shrewsbury and Chester Railways, and the Union into One Company of the Three several Companies to whom the said Railway respectively belong.

PROFESSIONAL LISTS.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 26th Sept. to 20th October, 1864, both inclusive, with dates when gasetted.

Brooke, Zachary, and William Henry Drage, New Beaswell Court, Lincoln's Inn, Solicitors and Attorneys. Oct. 3.

Guy, John, Joseph James Reed, and Henry Harrison, 8, Cannon Row, Westminster, and Hampton Wick, Solicitors and Attorneys, so

far as regards the said Henry Harrison. Sept. 29.

Keeling, Frederic Page, William Howard, and James Inglis, Colchester, Attorneys, Solicitors, and Conveyancers, so far as regards the said Frederic Page Keeling. Oct. 17.

Lawford, Edward, John Lawford, and Henry Smith Lawford, Drapers' Hall, Throgmorton Street, Attorneys and Solicitors. Oct. 20.

Lovett, Philip William, and Thomas West, Guildford, Solicitors. Oct. 3.

Parker, Henry, Thomas James Rooka, Henry Parker, jun., and William Matthew Mills Whitehouse, 17, Bedford Row, Attorneys and Solicitors, so far as regards the said William Matthew Mills Whitehouse. Sept. 29.

Philippe, Henry, Robert Voss, and Edward Augustus Mareden, 4, Sise Lane, City, Attorneys and Solicitors, so far as regards the said Robert Voss. Oct. 10.

Wells, Robert, Joseph Coltman Smith, and Edward Dodd, jun., Kingston-upon-Hull, Attorneys and Solicitors, so far as relates to the said Edward Dodd, jun. Oct. 3.

COUNTRY COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

Appointed under the 16 & 17 Vict. c. 78, with dates when gasetted.

Hulbert, Wm., East Halsey, Berkshires. Oct. 20.
Seagram, John, Warminster. Oct. 10.

NOTES OF THE WEEK.

LAW PROMOTIONS AND APPOINTMENTS.

THE Queen has been pleased to appoint James Hensley, Esq., Attorney-General, and William Sneybey, Esq., Registrar of Deeds and Keeper of Plans for the Island of Prince Edward, to be Members of the Executive Council of that Island.

William Wright Baden, Esq., of Canterbury, has been appointed Deputy Coroner for Kent.

J. H. Smith, Esq., Barrister-at-Law, has been appointed Registrar of the Irish Court of Bankruptcy, in the room of Hercules M'Donnell, Esq.

Fredricet Walter Grundy, Esq., has been appointed Clerk of the Bridport County Court.

Francis Smith, Esq., has been appointed Attorney-General of Van Diemen's Land.

Valentine Fleming, Esq., has been appointed Chief Justice of the Supreme Court of Van Diemen's Land, in the room of Sir John Lewis Padder, resigned.

NEW MEMBERS OF PARLIAMENT.

Joseph Acton, Esq., for Wigan, in the room of Ralph Anthony Thicknesse, Esq., deceased.

Adam Duncan Haldane, commonly called Viscount Duncan, for the County of Forfar, in the room of Lieut.-Colonel the Hon. Lauderdale Maule, deceased.

NEW ELECTION AUDITOR.

Donald Mackenzie Dunlop, Esq., of the Inner Temple, Barrister-at-Law, for the city of Bath.

NAMES OF CASES

REPORTED IN VOLUME XLVIII.

	PAGE		PAGE
——, in re, <i>ex parte</i> Wright (Q. B.) ..	19	Done, <i>ex parte</i> (Q. B.) ..	167
Adams v. Bennett (V. C. K.) ..	148	Dormer v. Phillips (V. C. K.) ..	372
Ainger, <i>ex parte</i> (Q. B.) ..	38	Dress v. Savage (Q. B.) ..	149
Alexander v. Brame (M. R.) ..	391	Drewry's Trusts, in re, <i>ex parte</i> Overseers, &c., of Whitehaven (V. C. K.) ..	69
Alexander's Trust, in re (V. C. K.) ..	85	Du Hourmelin v. Sheldon (M. R.) ..	190
Allen's Trust, in re (V. C. W.) ..	492	Dunn v. Coutts (Q. B.) ..	39
Allum v. Bowthwaite (Exch.) ..	55	Edwardes v. Batley (M. R.) ..	290
Amor v. Masters (Exch.) ..	88	Edwardes v. Trevelly (Q. B.) ..	168
Anon (M. R.) ..	250	Elt v. Burial Board of Islington (V. C. W.) ..	452
—— in re (C. P.) ..	55	English v. Campbell (V. C. K.) ..	291
Atlee v. Hooke (V. C. S.) ..	291	Faithfull v. Gillett (V. C. S.) ..	211
Atherton v. Crowder (M. R.) ..	451	Fallows v. Lord Dillon (V. C. S.) ..	130
Attorney-General v. Freyman (M. R.) ..	290	Farquhar v. Addington (L. J.) ..	271
—— v. Radloff (Exch.) ..	152	Faversham, Mayor, &c., of, v. Ryder (L. J.) ..	331
Avery v. Langford (V. C. W.) ..	212	Ferries v. Mullins (V. C. S.) ..	472
Bailey and another, <i>ex parte</i> , in re Burrell (L. J.) ..	13	Flight v. Camac (V. C. K.) ..	35
Bailey and another, <i>ex parte</i> (Q. B.) ..	36	Forbes, in re, <i>ex parte</i> Buckinghamshire Railway Company (V. C. S.) ..	15
Baker v. Read (M. R.) ..	35	Ford v. Campbell (Q. B.) ..	54
—— v. Steen (Exch.) ..	56	Forster's Trust, in re (V. C. K.) ..	291
Bilgny v. Broadhurst (V. C. K.) ..	432	Francis v. Brooking (M. R.) ..	109
Bamford v. Chadwick (C. P.) ..	111	Freeland v. Stansfield (V. C. S.) ..	167
Banks v. Ollerton (Exch.) ..	132	Freeman v. Freeman (L. J.) ..	249
Barber, in re W. H. (M. R.) ..	189	Freer v. Freer and another (M. R.) ..	85
Barnard v. Denney (C. P.) ..	111	Gann v. Gregory (L. C.) ..	84
Bateman v. Marguerison (M. R.) ..	371	Goldney v. Crabbe (M. R.) ..	471
Bear's Trust, in re (V. C. K.) ..	210	Golds v. Grenfield (V. C. S.) ..	392
Beavan v. M'Donnell and another (Exch.) ..	151	Goodall v. Gawthorne (V. C. S.) ..	332
Begg v. Forbes (C. P.) ..	192	Good Intent Benefit Society, in re (V. C. K.) ..	271
Bennet v. Powell (V. C. K.) ..	312	Gray v. Cann (V. C. S.) ..	272
Bernays, in re (C. P.) ..	55	Great Northern Railway Company v. Harrison (Exch. Ch.) ..	192
Blesard v. Whalley and others (V. C. W.) ..	372	Grey and another v. Willicombe (Exch.) ..	88
Bone v. Augier (V. C. W.) ..	292	Griffiths v. Hatchard (V. C. W.) ..	232
Booth, in re (L. J.) ..	289	Gurney and others v. Behrend and others (Q. B.) ..	70
Bott v. Stancliffe and another (Q. B.) ..	131	Gwatkin and others v. Campbell (V. C. W.) ..	130
Bowden v. Henderson (V. C. S.) ..	231	Hardy's Estate, in re, <i>ex parte</i> Sheffield Junction Railway Company (V. C. K.) ..	14
Boyle, in re, <i>ex parte</i> Turner (L. J.) ..	471	Harris v. Carter (Q. B.) ..	18
Brook v. Riddall (V. C. S.) ..	55	Harris's Trust, in re (V. C. W.) ..	332
Buckinghamshire Railway Company, <i>ex parte</i> , in re Forbes (V. C. S.) ..	15	Harvey v. Harvey (V. C. W.) ..	17
Burchfield v. Moore (Q. B.) ..	71	Heath v. Chapman (V. C. K.) ..	412
Burrell, in re <i>ex parte</i> Bailey and another (L. J.) ..	13	Hemming v. East (V. C. W.) ..	292
Bytheses v. Bytheses (Ct. of Ch.) ..	310	Herman v. Shelby (Q. B.) ..	39
Calley v. Richards (M. R.) ..	209	Herring v. Tomlin (Q. B.) ..	38
Campbell v. Moxhay (V. C. S.) ..	251	Hichens v. Kelly (V. C. S.) ..	15
Canning v. Canning (V. C. K.) ..	472	Hill v. Jones (V. C. W.) ..	252
Canterbury, <i>ex parte</i> Archbishop of, in re Wimbledon and Croydon Rail. Act, 1853 (V. C. S.) ..	191	—— v. Tollett (L. C.) ..	109
Cator v. Mason (V. C. K.) ..	332	Holdsworth's Trusts, in re (V. C. W.) ..	191
Chaffers v. Baker, (L. J.) ..	166	Holland, in re, <i>ex parte</i> Rudge (M. R.) ..	311
Chaplin v. Levy (Exch.) ..	71	Hooper v. Hooper (V. C. S.) ..	211
Chillwell v. Hocknell (V. C. W.) ..	252	Hopkins v. Tanqueray (C. P.) ..	87
Clark, <i>ex parte</i> , in re Thurgood (M. R.) ..	412	Houghton Chapel, in re (V. C. W.) ..	472
Clarke v. Gill (V. C. W.) ..	292, 312	Howell v. Evans (V. C. S.) ..	312
Clayton v. Percy (Exch.) ..	150	Hughes v. Great Western Rail. Co. (C. P.) ..	55
Clive v. Clive (V. C. W.) ..	36	—— v. Humphries (Q. B.) ..	131
Coke v. Bishop (Q. B.) ..	37	—— v. Wells (V. C. W.) ..	432
Cook v. Gregson (V. C. K.) ..	15	Hunt, <i>ex parte</i> , in re M'Kenna (L. J.); (L. C.) ..	249, 331
Cooke v. Wagster (V. C. S.) ..	36	Ingram's Trust, in re (V. C. K.) ..	312
Cooper v. Tayler (L. J.) ..	310	Ialey v. Chubb (M. R.) ..	210
Cope v. Arnold (V. C. S.) ..	85	Jackson v. Henderson (Q. B.) ..	149
Daniel v. Fussell (V. C. W.) ..	167	James v. Rice (L. J.) ..	311
Darlington v. Hamilton (V. C. W.) ..	52	—— v. Wynford, Lord (V. C. S.) ..	492
Dawson v. Williams, clerk (Q. B.) ..	39	Jenkyns v. Robertson (V. C. K.) ..	190
Deacon's Trust, in re (V. C. W.) ..	252	Judge v. Baker (L. J.) ..	229
Deeks v. Stanhope (V. C. K.) ..	332	Kane v. Reynolds (V. C. S.) ..	291
Delany, in re (C. P.) ..	150		
De Windt v. De Windt (V. C. W.) ..	231		
Digby v. Jackson (M. R.) ..	331		
Dollond and another v. Johnson (V. C. S.) ..	129		

	PAGE		PAGE
Kempton v. London and North Western Railway Company (Exch.)	40	Queen v. Williams (Q. B.)	18
Kirby v. Simpson (Exch.)	169	— v. Withyham, Sussex, Overseers of (Q. B.)	167
Knowles v. Mount (L. C.)	248	— v. Wyng (Q. B.)	19
Lake v. Plaxton (Exch.)	152	Ramaden v. Smith (V. C. K.)	35
Lancashire and Yorkshire Railway Company, in re, exparte Macaulay (L. J.)	271	Roberts v. Roberts (V. C. K.)	14
Lancaster v. Carter (V. C. W.)	53	Rodriguez Melhuish and another (Exch.)	151
Laslett v. Cliffe (V. C. S.)	110	Roper v. Whieldon (M. R.)	250
Laxton v. Edell (M. R.)	431	Rose's Settlement, in re (V. C. K.)	230
Limond, in re (L. J.)	84	Rowberry v. Morgan (Exch.)	72
Londonderry v. Vane (L. C.)	289	Rowe v. May and another (M. R.)	14
Macaulay, exparte, in re Lancashire and Yorkshire Railway Company (L. J.)	271	Rowley v. Burges (V. C. K.)	432
McCulloch v. Gregory (V. C. W.)	452	Rudge, exparte, in re Holland (M. R.)	311
McKellar v. Summers, jun. (Exch.)	88	Russell, exparte, in re Minnitt (L. J.)	13
McKenna, in re, exparte Hunt (L. J.); (L. C.)	249, 331	Sauville v. Commissioners of Inland Revenue (Exch.)	151
Man v. Fuller (V. C. W.)	291	Saward v. Macdonnell (M. R.)	351
Marryatt v. Marryatt (V. C. K.)	166	Schepeler v. Durant (C. P.)	20
Marsh v. Marsh (M. R.)	432	Shaw v. Hardingham (M. R.)	290
Martin v. Wellstead (V. C. W.)	232	Sheffield Junction Railway Company, exparte, in re Hardy's Estate (V. C. K.)	14
Mayhew v. Suttle (Q. B.)	168	Shroeder and others v. Shroeder (V. C. W.)	69
Meyers v. Tills (Q. B.)	148	Sims' Trust, in re (V. C. S.)	412
Milne v. Gilbert (L. J.)	209	Smith v. Adams (L. J.)	270, 311
Minnitt, in re, exparte Russell (L. J.)	13	— v. Smith (V. C. S.)	211
Mitchell v. Hender (Q. B. P. C.)	54	Stane's Trust, in re (V. C. K.)	271
Morgan v. Morgan (V. C. K.)	271	Stevens v. Midland Railway Company and Lauder (Exch.)	168
Morgan's Trust, in re (V. C. W.)	17	Stobart v. Todd (V. C. K.)	230
Morratt v. Walton (L. C.); (V. C. K.)	189, 250	Stock v. Whitmore (V. C. K.)	230
Moss v. Herter (V. C. S.)	129	Stokes v. Grissell (C. P.)	54
Mudd v. Fagg (Q. B.)	71	Streetfield v. Bedford (V. C. K.)	251
Naah v. Hodgson (V. C. W.)	351	Swinton, in re Constable of (M. R.)	129
Newbury v. Benson (L. J.)	352	Tapping v. Hooper (V. C. W.)	272
Nicholl v. Grotz (Exch.)	131	Tate v. Leithhead (V. C. W.)	392
Nichols v. Gayford (Exch.)	72	Theobald v. Railway Passengers' Insurance Company (Exch.)	151
Norton v. Cooper (L. J.)	451	Thirtle v. Vaughan (V. C. W.)	232
Oakham and Uppingham Grammar Schools, exparte Governors of (V. C. K.)	250	Thomas v. Cooper (V. C. S.)	211
Oppenahaw v. Robinson (V. C. W.)	412	— v. Russell (Exch.)	56
O'Toole v. Brown and others (Q. B.)	70	Thompson's Trust, in re (L. J.)	34
Oxford and Rugby Rail. Company, exparte, in re Turner's Estate (V. C. K.)	52	Thomson v. Judge (V. C. K.)	452
Parker v. Sowerby (Court of Ch.)	148	Thornton v. Thornton (V. C. W.)	16
Pierce v. Williams (Exch.)	169	Thurgood, in re, exparte Clark (M. R.)	412
Pindar v. Barr (Q. B.)	191	Tillie and Henderson's Patent, in re (L. C.)	270
Plowden v. Campbell (Q. B.)	150	Tottenham v. Emmett (V. C. S.)	15
Plumbers' Co. and another v. Corbet (V. C. W.)	53	Tracey v. Lawrence (V. C. K.)	210
Pope, exparte (L. C.)	229	Turner, exparte, in re Boyle (L. J.)	471
Potter's Deed, in re Stamp Duty on (Exch.)	152	Turner's Estate, in re, exparte Oxford and Rugby Railway Company (V. C. K.)	52
Prendergast v. Moore (V. C. K.)	392	Underwood v. Wing (M. R.)	229
Priddie v. Field (M. R.)	311	Vasing v. Watson (Exch.)	150
Queen v. Alleyne and others (Q. B.)	149	Wadsworth v. Bentley (Q. B.)	53
— v. Bourn, Vicar, &c. of (Q. B.)	87	Walcot v. Botfield (V. C. W.)	16
— v. Brydges and others (Q. B.)	38	Ward v. Ward (V. C. K.)	351
— v. Carlisle and another (Cr. Ca. Res.)	20	Ward's Estate, in re (V. C. W.)	17
— v. Day (Q. B.)	119	Waters v. Waters (V. C. S.)	231
— v. Eastern Archipelago Com. (L. C.)	100	Watson v. Spratley (Exch.)	212
— v. Featherstone (Cr. Ca. Res.)	20, 112	Watts v. Rees (Exch.)	40
— v. Harris (Cr. Ca. Res.)	20	Welch v. Cole (V. C. K.)	190
— v. Jervis (Q. B.)	70	Wellesley v. Mornington (V. C. K.)	129, 166
— v. Kent, Justices of, (Q. B.)	38	Whitehaven, exparte Overseers, &c., of, in re Drewry's Trusts (V. C. K.)	69
— v. Larkin (Cr. Ca. Res.)	112	Whitmore v. Horne (Q. B.)	71
— v. Middlesex, Justices of (Q. B.)	54	Wickham v. Gatrill (V. C. S.)	372
— v. Pharmaceutical So., Registr. of (Q. B.)	38	Wilde v. Murray (V. C. W.)	251
— v. Pratt (Cr. Ca. Res.)	352	Wilson v. Wilson (C. P.)	19
— v. Read (Q. B.)	149	Wimbledon and Croydon Rail. Act, 1853, in re, exparte Archbishop of Canterbury (V. C. S.)	191
— v. Robinson (Q. B. P. C.)	39	Winch's Trusts, in re (Ct. of Ch.)	147
— v. Russell (Q. B.)	130	Wood v. Surr (M. R.)	492
— v. Southampton, Justices of (Q. B.)	18	Worth v. Cubitt (M. R.)	331
— v. Staffordshire, Justices of (Q. B.)	37	Wright, exparte, in re — (Q. B.)	19
— v. Stonehouse (East), Justices of (Q. B.)	18		
— v. Vivian (Q. B.)	110		

NAMES OF CASES

NOTED, CITED, AND DIGESTED IN VOLUME XLVIII.

	PAGE		PAGE
<i>Amis v. Winter</i> , 3 Swanst. 578, n. ..	129	<i>Chilcote</i> , in re, 1 Beav. 421 ..	258
<i>Acey v. Fernie</i> , 7 M. & W. 151 ..	365	<i>Cholmondeley v. Lord Ashburton</i> , 6 Beav. 86	209
<i>Adams v. London and Blackwall Railway Co.</i> , 2 M'N. & G. 118 ..	15	<i>Church v. Hooper</i> , 16 Beav. 182 ..	366
— <i>v. Savage</i> , 2 Salk. 679 ..	86	<i>Clancy</i> , in re, 16 Beav. 295 ..	252
<i>Adey v. Arnold</i> , 2 De G., M'N. & G. 432 ..	85	<i>Clark v. May</i> , 16 Beav. 273 ..	51
<i>Ainslie v. Sims</i> , 17 Beav. 57, 174 ..	428, 442	<i>Clifton v. Robinson</i> , 15 Beav. 335 ..	366
<i>Anon.</i> , 1 Chit. 558, n.; 2 Chit. 62 ..	38	<i>Colvill</i> , app. v. Lewis, resp., 2 C. B. 60 ..	38
<i>Antrobus v. Smith</i> , 12 Ves. 39 ..	48	<i>Cookson v. Bingham</i> , 17 Beav. 262 ..	483
<i>Attorney-General v. Ashburnham</i> , 1 Sim. & S. 394, 7 ..	291	<i>Cooper v. Bockett</i> , 4 Moore, P. C. 419 ..	84
— <i>v. Ruper</i> , 2 P. Wms. 125 ..	232	<i>Coyle v. Alleyne</i> , 16 Beav. 548 ..	428, 429
— <i>v. Salkeld</i> , 16 Beav. 554 ..	428	<i>Cross v. Thomas</i> , 16 Beav. 592 ..	262
— <i>v. Smythies</i> , 16 Beav. 385 ..	80	<i>Cumming</i> , in re, 1 De G., M'N. & G. 537 ..	325
— <i>v. Williams</i> , 2 Cox. 387; 4 ..	252	<i>Cuthbertson v. Parsons</i> , 12 C. B. 504 ..	72
— <i>Bro. C. C. 526</i> ..	53	<i>Danford v. Cameron</i> , 8 Hare, 329 ..	291
<i>Back v. Stacy</i> , 2 Russ. 121 ..	269	<i>D'Arcy v. Blake</i> , 2 Sch. & Lef. 387 ..	271
<i>Bailey v. Wright</i> , 18 Ves. 49 ..	366	<i>Davies</i> , in re W. B., 1 Lowndes & M. 207 ..	104
<i>Barnes v. Pennell</i> , 2 H. of L. Cas. 497 ..	429	<i>Dawson v. Paven</i> , 5 Hare, 415 ..	53
<i>Barron v. Lancefield</i> , 17 Beav. 208 ..	166	<i>De Feuchères v. Dawes</i> , 11 Beav. 46 ..	325
<i>Bartlett v. Bartlett</i> , 4 Hare, 631 ..	81	<i>Denny v. Treppell</i> , 2 Wil. 378 ..	279
<i>Batchelor v. Middleton</i> , 6 Hare, 84 ..	9	<i>Dent v. Busham</i> , 9 Exch. R. 469 ..	49
<i>Bear v. Smith</i> , 5 De G. & S. 92 ..	49	<i>Detillin v. Gale</i> , 7 Ves. 586 ..	240
<i>Beatson v. Beatson</i> , 12 Sim. 281 ..	152	<i>Doe d. Mayo v. Cannell</i> , 1 Lowndes & M. 161 ..	160
<i>Belcher v. Sikes</i> , 6 B. & C. 234 ..	429	— <i>Padwick v. Wittcomb</i> , 4 H. of L. Cas. 425 ..	170
<i>Bentley v. Craven</i> , 17 Beav. 204 ..	366	— <i>Pitt v. Shewin</i> , 3 Campb. 134 ..	20
<i>Beresford, Lady v. Driver</i> , 16 Beav. 134 ..	364	<i>Drake v. Sykes</i> , 7 T. R. 113 ..	279
<i>Bird v. Browne</i> , 14 Jur. 134 ..	213	<i>Earle</i> , ex parte, 1 Lowndes & M. 180 ..	79
— <i>ex parte</i> , in re Carne, 2 De G. M'N. & G. 963 ..	32	<i>Eccleball</i> , in re Overseers of, 16 Beav. 297 ..	390
<i>Blackman</i> , in re, 16 Beav. 377 ..	49	<i>Eclipse Mutual Benefit Association</i> , in re, 1 Kay, xxx. ..	51
<i>Blakely v. Brady</i> , 2 Dr. & Walsh. 311 ..	65, 281	<i>Eden v. Wilson</i> , 4 H. of L. Cas. 257 ..	172
<i>Blakeney v. Dufaur</i> , 16 Beav. 292; 2 De G., M'N. & G. 771 ..	152	<i>Edinburgh and Leith Railway Company v.</i> <i>Dawson</i> , 7 Dowl. 573, 6, 7 ..	80
<i>Blandy v. Herbert</i> , 9 B. & C. 396 ..	325	<i>Edwards v. Hall</i> , 1 Eq. Rep. 145 ..	252
<i>Blaau v. Bell</i> , 2 De G., M'N. & G. 775 ..	170	— <i>v. Jones</i> , 1 M. & C. 226 ..	49
<i>Booth v. Clive</i> , 10 C. B. 827; 2 L. M. & P. 283 ..	505	<i>Ellis v. Ellis</i> , 1 Vin. Abr. 475 ..	148
<i>Boulton v. Beard</i> , 3 De G., M'N. & G. 608 ..	343	<i>Ellison v. Ellison</i> , 6 Ves. 662 ..	48
<i>Bowen v. Price</i> , 3 De G., M'N. & G. 899 ..	32	<i>Elsie v. Osborn</i> , 1 P. Wms. 387 ..	86
<i>Bradley v. Munton</i> , 16 Beav. 294 ..	48	<i>Ely, Dean, & co.</i> , of v. Edwards, 22 Law J., N. S., Ch. 629 ..	290
<i>Bridge v. Bridge</i> , 16 Beav. 320 ..	278	— <i>v. Gayford</i> , 16 Beav. 561 ..	344
<i>Briggs v. Sowton</i> , 9 Dowl. P. C. 105 ..	9	<i>Emerson v. Lashley</i> , 2 H. Bl. 248 ..	49
<i>Brooks v. Burton</i> , 1 Y. & C., Ch. 278 ..	65	<i>Faulkner v. Chevell</i> , 5 Ad. & E. 213 ..	278
<i>Browne</i> , in re, 15 Beav. 61; 1 De G., M'N. & G. 322 ..	408	<i>Field v. Brown</i> , 17 Beav. 146 ..	325
<i>Brown</i> , ex parte, 1 Lowndes & M. 219 ..	152	— <i>v. in re</i> , 16 Beav. 593 ..	343
<i>Buckley's Trust</i> , in re, 17 Beav. 110 ..	223	<i>Finch v. Squire</i> , 10 Ves. 41 ..	16
<i>Caldwell v. Dawson</i> , 5 Exch. R. 1 ..	65	— <i>in re</i> , 16 Beav. 585 ..	223
<i>Callender v. Olericks</i> , 5 Bing. N. C. 58; 6 Scott, 761 ..	365	<i>Flamank</i> , ex parte, 1 Sim. N. S. 260 ..	15
<i>Campbell</i> , in re James, 3 De G., M'N. & G. 585 ..	503	<i>Fletcher v. Fletcher</i> , 4 Hare, 67 ..	48
<i>Cann's Estate</i> , in re, 19 Law J., N. S., Ch. 376 ..	271	<i>Foligno v. Martin</i> , 16 Beav. 586 ..	408
<i>Carne</i> , in re, ex parte Bird, 2 De G., M'N. & G. 963 ..	243	<i>Ford v. Earl of Chesterfield</i> , 16 Beav. 516 ..	223
<i>Carnley</i> , ex parte, 2 Dowl. N. S. 945; 12 Law J., N. S., Q. B. 98 ..	38	<i>Forster v. Menzies</i> , 16 Beav. 368 ..	390
<i>Carpenter v. Thornton</i> , 3 B. & Ald. 52 ..	49	<i>Fortescue v. Barnett</i> , 3 Myl. & K. 36 ..	48
<i>Carr v. Jackson</i> , 21 L. J., Exch., 137 ..	364	<i>Gale v. Lewis</i> , 9 Q. B. 742 ..	365
<i>Carter v. Dimmock</i> , 4 H. of L. Cas. 357 ..	170	<i>Garriek v. Lord Camden</i> , 14 Ves. 372 ..	209
<i>Chambers v. Howell</i> , 12 Beav. 563 ..	9	<i>Gibson v. Small</i> , 4 H. of L. Cas. 353 ..	171
<i>Champion v. Rigby</i> , 1 Russ. & M. 539 ..	35	<i>Girdlestone v. Lavender</i> , 9 Hare, liii. ..	110
<i>Chedworth, Lord v. Edwards</i> , 8 Hare, 48 ..	365	<i>Gordon v. Jesson</i> , 16 Beav. 440 ..	179
		<i>Great Western Railway Company v. Oxford</i> , <i>Worcester and Wolverhampton Rail. Co.</i> , 5 De G., M'N. & G. 363 ..	51
		<i>Gregory v. Gregory</i> , Coop. Ch. Cas. 201; <i>Jacob</i> , 631 ..	35

	PAGE		PAGE
Guilford v. Sims, 13 C. B. 370 ..	104	Ostell v. Le Page, 2 De G., M'N. & G. 893 ..	367
Gully v. Bishop of Exeter, 2 Moo. & P. 266 ..	161	Page v. Page, in re Page, 16 Beav. 588 ..	408
Gwynne v. British Peat, Charcoal, and Manure Company, 17 Beav. 7 ..	305	Parke's Charity, in re, 12 Sim. 329 ..	390
Hair, in re, 10 Beav. 187 ..	258	Parker v. Kett, 1 Salk. 96 ..	279
Hakewill, exparte, 3 De G., M'N. & G. 116 ..	408	Parsons v. Bignold, 13 Sim. 518 ..	365
Hall v. Roche, 8 T. R. 187 ..	279	Payne v. Little, 16 Beav. 563 ..	344
Hall's Estate, in re, 2 De G., M'N. & G. 748 ..	243	Peachey v. Rowland, 13 C. B. 182 ..	72
Harmer v. Priestley, 16 Beav. 569 ..	240	Peers v. Sneyd, 17 Beav. 151 ..	304
Harvey v. Tebbutt, 1 Jac. & W. 197 ..	240	Pemberton, exparte, in re Tyther, 2 De G., M'N. & G. 960 ..	239
Hatch v. Searles, 2 Smale & G. 147 ..	9	Perkins v. Ede, 16 Beav. 268 ..	50
Hawke, exparte, 45 Leg. Obs. 283 ..	38	Pidcock v. Beaultbee, 2 De G., M'N. & G. 898 ..	367
Hawtayne v. Bourne, 7 M. & W. 595 ..	364	Plenty v. West, 16 Beav. 356 ..	390
Hennegal v. Evance, 12 Ves. 201 ..	36	Prince v. Cooper, 16 Beav. 546 ..	262
Hennesey, exparte, 1 Connor & L. 53 ..	365	Pugh, in re, 17 Beav. 336 ..	483
Hewitt v. Price, 4 Man. & G. 355; 5 Scott, N. R. 229 ..	54	Queen v. Earnshaw, 3 E. & B. 143, n. ..	126
Hobson v. Neale, 17 Beav. 178 ..	384	— v. Great Western Rail. Co., 3 Q. B. 333 ..	266
Hoby v. Hitchcock, 5 Ves. 699 ..	281	— v. Harden, 1 Lowndes & M. 214; 2 E. & B. 188 ..	126, 187
Holgate v. Haworth, 17 Beav. 259 ..	483	— v. Hartley, 3 Ellis & B. 143 ..	126
Holmes v. Penny, 9 Exch. R. 584 ..	125	— v. Holloway, 1 Denn. C. C. 375 ..	249
Holroyd v. Wyatt, 1 De G. & S. 193 ..	35	— v. Morton, 4 Q. B. 146 ..	126
Horner v. Graves, 7 Bing. 735; 5 M. & P. 768 ..	212	— v. Newbury, Mayor of, 1 Q. B. 751 ..	127
Horner's Trust, in re, 5 De G. & S. 483 ..	52	— v. Saffron Walden, Inhabitants of, 9 Q. B. 76 ..	55
Humble v. Humble, 12 Beav. 43 ..	35	— v. Sidney, 2 L. M. & P. 149 ..	126
Hunter v. —, 6 Sim. 449 ..	291	— v. Sill, 1 Pearce C. C. R. 132 ..	391
Hurst v. Hurst, 16 Beav. 372 ..	80	— v. Suffolk, Justices of, 21 Law J., N. C., Mag. Cas. 169 ..	54
— v. Padwick, 17 Law J., N. S., Ch. 169 ..	251	Ratcliffe v. Winch, 16 Beav. 576, 577 ..	423, 429
Jenkins v. Hutchinson, 13 Q. B. 744 ..	364	Rawley v. Holland, Vin. v. 22, p. 189, pl. 11 ..	86
Jones v. Beach, 2 De G., M'N. & G. 886 ..	282	Read v. Legard, 6 Exch. R. 636 ..	69
Kekewich v. Manning, 1 De G., M'N. & G. 176 ..	49	Reedie v. London and North Western Railway Company, 4 Exch. R. 244 ..	72
Kelson v. Kelson, 10 Hare. 385 ..	161	Rex v. Rector, &c., of Birmingham, 7 A. & E. 254 ..	87
Kilkenny and Great Southern and Western Rail. Co. v. Fielden, 6 Exch. R. 81, 6 ..	80	Richards v. Scarborough Market Company, 17 Beav. 83 ..	325
Kilner v. Leech, 10 Beav. 362 ..	209	Roberts v. Collett, 1 Smale & G. 138 ..	9, 31
Kitten v. Fagg, 10 Mod. 288 ..	279	— v. Williams, 4 Hare, 129 ..	240
Knight v. Ellis, 2 Bro. C. C. 569 ..	147	Rochdale Canal Co. v. King, 16 Beav. 630 ..	283
— v. Fox, 5 Exch. R. 721 ..	72	Routh v. Tomlinson, 16 Beav. 251 ..	65
— v. Knight, 16 Beav. 358 ..	390	Rowley v. Adams, 16 Beav. 312 ..	32
Laicock's case, Latch. 187; Noy, 90 ..	279	Russell v. Dickinson, 4 H. of L. Cas. 293 ..	170, 172
Lake v. Currie, 2 De G., M'N. & G. 536 ..	325	Sadlier v. Biggs, 4 H. of L. Cas. 435 ..	171
Langham's will, in re, 1 Eq. Rep. 118 ..	252	Sanders v. Kiddell, 7 Sim. 536 ..	318
Leigh v. Hind, 9 B. & C. 774 ..	55	Schofield v. Corbett, 6 N. & M. 527; 11 Q. B. 779 ..	40
Lewin, in re, 16 Beav. 608 ..	258	Selsey, Lord v. Rhoades, 1 Bl. N. S. 1; 9 Sim. & St. 41 ..	35
Lewis v. Lewis, 9 Law J., N. S., Ch. 176 ..	50	Senior v. Pritchard, 16 Beav. 473 ..	179
— v. Nicholson, 16 Jur. 1041 ..	364	Shelley's case, 1 Rep. 104, a. ..	86
Liverpool, &c., Rail. Co., in re, 17 Beav. 392 ..	503	Shuttleworth v. Lowther, cited 7 Ves. 586 ..	240
— works' Co., 2 De G., M'N. & G. 852 ..	325	Sidgier v. Tyte, 11 Ves. 202 ..	423
Lloyd, in re, 10 Beav. 451 ..	389	Sloane v. Cadogan, 3 Sugd. Ven. 10th ed. app. 66 ..	48
Lookhart v. Hardy, 4 Beav. 224 ..	258	Smith v. Elger, 3 Jur. 790 ..	53
Longstaff v. Rennison, 1 Drewry, 28 ..	252	— v. Green, 1 Coll. 555 ..	240
Lovell v. Galloway, 17 Beav. 1 ..	342	— v. Pococke, 2 Drewry, 197 ..	31
Lowes v. Ives, 2 De G., M'N. & G. 784 ..	282	Squib v. Wyn, 1 P. Wms. 378 ..	209
— v. Lowes, 2 De G., M'N. & G. 784 ..	282	Stansfield v. Hobson, 16 Beav. 236 ..	81
Lucas v. Dennison, 13 Sim. 384 ..	81	Stanton's case, 1 De G., M'N. & G. 214 ..	325
Lyburn v. Warrington, 1 Stark. N. P. C. 162 ..	152	Stevens, exparte, 16 Jur. 243 ..	14
Macleod v. Annesley, 16 Beav. 600 ..	442	Stewart v. Aberdeen, 4 M. & W. 211 ..	365
Martin v. Pycroft, 2 De G., M'N. & G. 785 ..	325	Stilk v. Myrick, 2 Campb. 317 ..	19
Massey v. Banner, 1 Jac. & W. 241 ..	363	Stone v. Marsh, 6 B. & C. 562 ..	372
Mek v. Kettlewell, 1 Hare, 464; 1 Phill. 342 ..	48	Straford, in re, 16 Beav. 27 ..	6
Mence v. Mence, 13 Ves. 348 ..	84	Summerfield v. Pritchard, 17 Beav. 9 ..	449
Moggridge v. Thackwell, 7 Ves. 88 ..	291	Sutton v. Montfort, 4 Sim. 559 ..	53
Moore v. Darton, 20 Law J., N. S., Ch. 626 ..	392	Swinburne v. Carter, 1 Lowndes & M. 209 ..	81
Morrice v. Bank of England, 3 Swanst. 573 ..	129	Tebbs v. Carpenter, 1 Madd. 290 ..	8
Moss, in re, 17 Beav. 59 ..	304	Tippin v. Cosin, 4 Mod. 380; Carth. 272 ..	80
Murray v. Barlee, 4 Sim. 82; 3 Myl. & K. 209 ..	187, 483	Tisdell v. Combe, 3 Nev. & P. 29 ..	129
Newman v. White, 16 Beav. 4 ..	9	Trilly v. Keefe, 16 Beav. 83 ..	32
Newcome v. Bowyer, 3 P. Wms. 37 ..	291		
Olding v. Smith, 16 Jur. 497 ..	364		
Osborne v. Morgan, 9 Hare, 432 ..	148		

	PAGE		PAGE
Tyther, in re, ex parte Pemberton, 2 De G., M'N. & G. 960	239	Wellealey v. Wellealey, 16 Sim. 1	408
Upfull's Trust, in re, 3 M'N. & G. 281	17, 69	Wetherell, ex parte, 2 De G., M'N. & G. 359 ..	189
Vaughan v. Atkins, 5 Burr. 2764	271	White v. Tommey, ex parte, 4 H. of L. Cas. 313 ..	172
Vincent v. Hunter, 5 Hare, 320	251	Wilkinson v. Coverdale, 1 Esp. 74	365
Volant v. Soyer, 13 Com. B. 231	32	———— ex parte, 9 Dowl. P. C. 320	38
Walker v. British Guarantee Assoc. 16 Jur. 885	365	Williams v. Williams, 17 Beav. 156	304
Warren v. Howe, 2 B. & C. 281	152	Wilson v. Chuer, 4 Beav. 214	240
Watt v. Watt, 3 Ves. 244	209	Wilton v. Hill, 2 De G., M'N. & G. 807 ..	325, 367
Watteau v. Billam, 18 Law J., N. S., Ch., 455 ..	251	Wisewold, in re, 16 Beav. 357	389
Waugh v. Waddell, 16 Beav. 521	187	Withy v. Mangles, 10 C. & F. 215	209
Wayn v. Lewis, 22 Law J., N. S., Ch. 1051 ..	110	Wood v. Williams, 4 Madd. 186	15
Weddall v. Nixon, 17 Beav. 160	344, 429	Woolley's estate, in re, 17 Jur. 850	14
Wedderburn v. Wedderburn, 17 Beav. 158 ..	408	Yates v. Plunbe, 2 Smale & G. 174	191
Weeks v. Cole, 14 Ves. 518	65	Young v. Goodson, 2 Russ. 255	389
		———— and another, in re, 13 C. B. 623 ..	161
		Zulueta v. Vinent, 3 M'N. & G. 246	390

TABLE OF TITLES OF CASES

REPORTED, NOTED, AND DIGESTED IN VOLUME XLVIII.

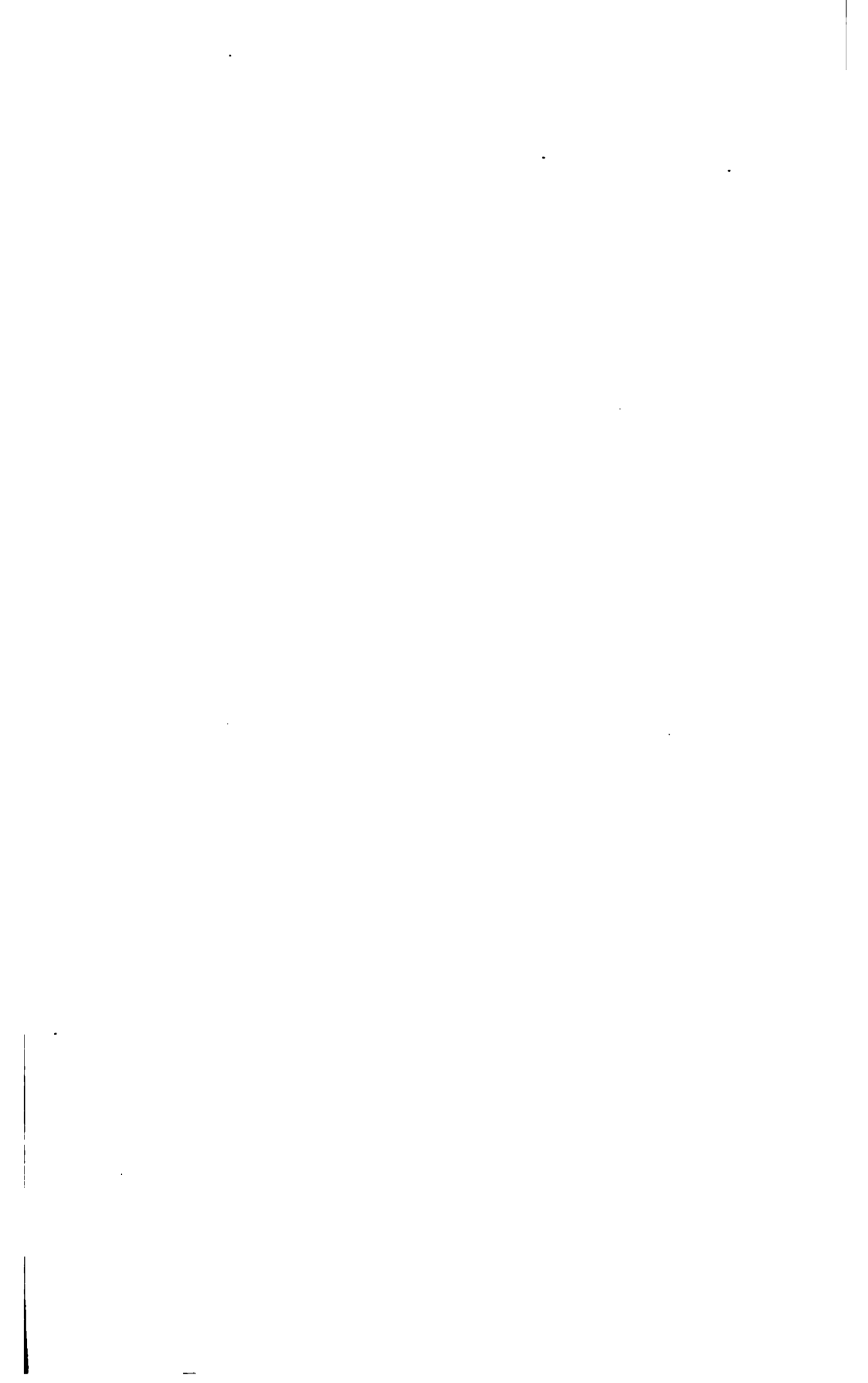
<p>According to defendant, 312</p> <p>Account, 371</p> <p>Account stated, 71</p> <p>Administration, 9, 15, 31, 85, 230, 251, 432</p> <p>Affidavit, 80</p> <p>Agreement, 53</p> <p>Alien enemy, 20</p> <p>Amendment, 112</p> <p>Ancient rights, 53</p> <p>Annulling adjudication, 170</p> <p>Appeal, 51, 72, 148, 170, 311</p> <p>Appeals, House of Lords, 170</p> <p>Appearance, 32, 189, 262</p> <p>Appointment, 85</p> <p>Apportionment, 9</p> <p>Apprentice, 71</p> <p>Arrest, 40</p> <p>Articled clerk, 38, 64, 79, 167</p> <p>Assault, 50, 86</p> <p>Assets, 5</p> <p>Attorney, 19, 38</p> <p>Attorney-General, 149</p> <p>Attorneys and solicitors, law of, 6, 30, 49, 64, 79, 104, 125, 187, 223, 239, 258, 304, 324, 343, 389, 483, 502</p> <p>Auctioneer, 14</p> <p>Award, 160</p> <p>Bail, 39</p> <p>Banker, 372, 472</p> <p>Bankrupt, 13, 39, 170, 249, 331</p> <p>Beershop, 168</p> <p>Benefit building society, 13</p> <p>Bequest, 34, 271, 331</p> <p>Bill of exchange, 56, 71</p> <p>—— of lading, 70</p> <p>Breach of covenant, 19, 38</p> <p>—— of trust, 85</p> <p>Bridges, Statute of, 18</p> <p>Calls, 36</p>	<p>Campbell's (Lord) Act, 111</p> <p>Carrier, 55</p> <p>Carrying on business, 54</p> <p>Case reserved, 20</p> <p>Certificate for costs, 71</p> <p>Certiorari, 54, 70, 88</p> <p>Chancery Acts, 65</p> <p>———— Oaths' Act, 109, 211</p> <p>Charitable bequest, 16, 231, 232, 250, 252, 391</p> <p>Charity, 80, 290</p> <p>Church discipline Act, 191</p> <p>Claim, practice on, 305</p> <p>Common Law practice, 160</p> <p>Common Law Procedure Act, 71, 72, 87</p> <p>Condition of sale, 232</p> <p>Conspiracy, 19</p> <p>Contract, 19, 55</p> <p>Convict, 291</p> <p>Conviction, 36</p> <p>Copyholds, 249, 270</p> <p>Coroner, 110, 229</p> <p>Costs, 6, 14, 15, 35, 37, 38, 52, 54, 85, 160, 169, 170, 189</p> <p>—— law of, 8, 32, 50, 65, 80, 126, 223, 240, 281, 304, 323, 344, 366, 408, 428, 483, 503</p> <p>Counsel, 282</p> <p>County Court, 39, 72, 88</p> <p>———— Act, 54</p> <p>Covenant, 33, 71</p> <p>Creditor's suit, 129, 130</p> <p>Crown costs, 291</p> <p>Delivery of bill, 49</p> <p>Detention of building materials, 88</p> <p>Devise, 232</p> <p>Disclaiming defendant, 223</p> <p>Dismissal of bill, 15</p> <p>Distress, 88</p> <p>Donatio inter vivos, 392</p> <p>Dower, 148</p>
---	--

- Election, 69
 Embezzlement, 20, 39
 Engineer, 131
 Equitable deposit of deeds, 211
 — mortgage, 292
 Equity Jurisdiction Improvement Act, 80, 110,
 179, 230, 262, 272, 282, 290, 304, 312, 343, 351,
 390, 432, 452
 Evidence, 58, 56, 130, 161, 170, 229, 292
 — law of, 81, 366
 Examination of witnesses, 84, 271, 292
 Executor, 8, 17, 211
 False representation, 20
 Fines and Recoveries' Act, 55, 132, 150
 Foreclosure, 15, 251, 290
 Frauds, Statute of, 212
 Friendly society, 51
 Frivolous suit, 50
 Habeas corpus, 39, 110
 Heir at law, 69
 Husband and wife, 35, 109, 351
 Inclosure of manor, 132
 Income tax, 35
 Indemnity, 211
 Indictment, 112, 352
 Information, 152
 Injunction, 53, 166, 167, 179, 452
 Insurance, 85, 151, 170
 Interpleader, 88
 Interlocutory application, 51
 Joint-stock company, 392
 Jurisdiction, 51, 85
 Laches, 35, 39, 51
 Larceny, 112
 Lease, 171
 Legacy, 172, 210, 291
 Legatee, 51, 231
 Lessee, 149
 Letters missive, 289
 Letters patent, 109
 Lien, 187
 Lighting and Watching Act, 37
 Limitations, Statute of, 81
 London Small Debts' Act, 71
 Lunatic, 17, 69, 87, 151
 Magistrate, 169
 Maintenance, 17, 69
 Malice, 150
 Mandamus, 18, 38, 87, 126, 167
 Manor, 172
 Married woman, 51, 55, 129, 148, 187, 190, 211,
 271
 Masters in Chancery Abolition Act, 331
 Metropolitan Police Act, 19
 Misappropriation by clerk, 111
 Misdirection, 86
 Mortgage, 81, 492
 Mortmain Act, 16, 232, 252
 Negligence, 72
 New trial, 37, 55
 Nonsuit, 55, 149
 Notarial attestation, 243
 Notice of action, 86, 88, 169
 Nuisance, 130
 Official assignee, 13, 179
 Parish registers, 243
 Parol contract, 212
 Parties, 15
 Partition, 472
 Partnership, 167
 Patent, 150, 270
 Pauper plaintiff, 125
 Payment into Court, 37, 166
 Payment out of Court, 250
 — of debts, 412
 Poor-rate, 18, 88
 Practice, House of Lords, 172
 — points in Common Law, 160
 — Equity, 9, 31, 51, 81, 161, 325,
 342, 366, 390, 408, 429, 442
 Principal and surety, 169, 190
 Principles of equity, 48
 Priority of proof, 13
 Privileged communication, 209
 Pro confesso, 51, 166, 311
 Production of deeds, 161
 Prohibition, 88
 Promissory note, 352
 Proof of debt, 8
 Purchase of land, 14
 Purchaser, 50, 452
 Quo warranto, 58, 126
 Railway company, 14, 15, 52, 55, 129, 168, 191,
 250, 271
 Ready money, 36
 Real estate, 70
 Redemption suit, 81, 240, 451
 Removal of poor, 18, 38, 54
 Renewal of leases, 172
 Revivor, 282, 332
 Sale, 35, 80, 87, 131, 262
 Seaman, 18, 168
 Secondary evidence, 32
 Security for costs, 65, 80, 150, 251, 281, 432
 Sequestration, 39
 Set-off, 40
 Setting aside release, 210
 Ship, 131
 Slander, 53
 Small Tenements' Rating Act, 87
 Solicitor, 189, 209, 248, 311, 412, 471
 Specific performance, 14, 52, 53, 210, 212
 Stamp, 56
 — Act, 151, 152
 Stay of proceedings, 312
 Stoppage in transitu, 70
 Substituted service, 250, 291
 Superstitious uses, 412
 Surgeon, 54
 Taking plea off file, 9
 Taxation, 6, 160, 223, 239, 258
 Tenant in fee, 332
 — for life, 191, 312
 Time bargains, 54
 Title, 50, 52
 Transfer of cause, 229
 Trover, 88
 Trustees, 15, 251, 351, 372, 472
 — Act, 1850, 32, 84, 85, 271, 289, 432
 — Extension Act, 1852, 190
 — Relief Act, 492
 Use and occupation, 111
 Usury, 167
 Vacating enrolment, 310
 Vendor and purchaser, 14, 32, 35, 408, 429
 Venue, change of, 192
 Voluntary settlement, 48, 129
 Ward, 332
 Weights and Measures' Act, 70, 131
 Warranty, 87
 Watermen's Act, 149
 Winding-up Act, 32
 Will, 14, 16, 17, 34, 36, 69, 70, 84, 85, 111, 147,
 172, 209, 230, 272, 310, 311, 321, 332, 372, 392,
 412, 431, 451, 471, 492
 Witnesses, 35, 54

GENERAL INDEX TO VOLUME XLVIII.

- ABOLISHED Courts of Request, 247**
Accountant-General's account, 5
Administration of Justice, taxes on, 57, 78, 106, 179
Administration of Oaths in Chancery, construction of Act, 159, 491
Admiralty Court amendment, 236
Advice to young lawyers, 427
Aggregate Meeting of Attorneys at Leeds, 465, 493
Alien, purchase of, 33
Arresting debtors going abroad, 430
Articled Clerks' queries, 32, 66, 410, 504
 service under agreement, 64
 Debating Society, 206
 service of Graduate with Special Pleader, 79
 attending County Courts and Magistrates, 429
Atkinson on Sheriff Law, 278
Atkinson's Shipping Laws, 159
Attorneys and Solicitors, Law of:
 taxing costs of trustee, 6
 solicitor of married woman, 187
 admission of, 12, 82, 268, 287
 change of solicitor, 324
 liability for insufficient security, 30
 delivery of bill of costs, 49, 185, 389
 causes of unpopularity, 79, 267
 liability of separate estate of married woman, 483
 striking off the Rolls, 104
 renewal of certificate, 446
Attorneys' Benevolent Institution, 81
Attorneys, taxing costs of, see Taxation
 annual registration, 503
Auction, deposits on sales of estates, 301
Bankruptcy, evidence before Commissioners, 363, 381
 Commissioners' proposed amendments, 41, 58
 Bill, 188, 195, 248
 costs, taxation of, 239
Bar, how to get on at, 367
 education of, 388
Barristers called, 145
Bills of Exchange Registration Bill, 121, 159, 173, 193, 220, 269
Bourdin's Exposition of the Land Tax, 300
Bribery prevention, 220, 248
Bunyon's Law of Life Insurance, 340
Candidates passed, 67, 186
Chancery new Orders, 122, 140, 188
 Procedure Amendment Bill, 198, 235
Claims, practice on, 305
Cinque Ports' Jurisdiction, 254
Circuits of the Judges, 144
Common Law practice, points in, 160
 reform, 1
Common Law procedure amendments, 63, 430
Conveyancing reform, 2
Conveyance of Real Property Amendment Bill, 4
Copyholds' enfranchisement, 123, 184, 227
 leases of, licence, 267, 430
Costs, Law of, 8, 32, 50, 65, 66, 80, 125, 126, 223, 240, 281, 304, 325, 344, 366, 408, 428, 503
County Courts' extension, 4
County Court statistics, analysis of business, 108, 141, 179
 statistics of, 29
 further extension, 473
Country Commissioners to administer oaths, 28, 68, 147, 247, 330, 431, 512
Courts, site of new, 25
Criminal Procedure Bill, 24
 Law Bills, 441
 expense of administering, 104
 Justice (Metropolis) Bill, 197
Deuman, Lord, memoir of, 453
Digest of House of Lords' Cases, 170
Divorce and Matrimonial Cause Bill, 154
Ecclesiastical Courts, 3; and see Testamentary Jurisdiction
Educational and property qualifications of attorneys, 353, 409, 410
Election auditors, 411, 431, 451, 512
Equity reform, 1
 Practice, decisions on, 9, 31, 51, 81, 161, 262, 282, 304, 325, 342, 343, 366, 390, 408, 429, 442
 principles, 48
 Jurisdiction Act, continuation of, 80, 179
Evidence, law of, 31
Examination questions, 10, 127
 candidates passed, 67, 186
 result of, 12, 108
 information relating to, 51, 83, 483, 491
Examinations at the Inns of Court, 82, 346
Executor and Trustee Society, 21
 rejection of bill, 115
Fees of Courts of Law, 224
Fitz-James, Chief Justice, and Bishop Fitz-James, 369
Forfeiture of leaseholds for non-insurance, &c., 341
Francis's Law of Charities reviewed, 7
Frauds Prevention Bill, 136
Fusion of Law and Equity, 83
Grand jurors, non-attendance of, 349
Hamel's Laws of the Customs reviewed, 27
Husband and wife, leaseholds of, 469
Husack's Rights of British and Neutral Commerce, 419

- Incorporated Law Society, opposition of, to Joint Stock Trust Bill, 73, 89, 113
 annual meeting, 161
 Report of Council, 285, 303, 325
 Inns of Court and Chancery Commission, 34, 52, 153, 270, 421, 433
 Insolvency, rent under, 33
 Insurance against fire, 66
- James on Building Society Mortgages, 462
 Judges' salaries payable from Consolidated Fund, 179
 Judgments Execution Bill, 136
- Kerr's Common Law Procedure Act, 476
- Langdale, Lord, character of, 349
 Lancaster Palatine Chancery Court, 175, 228, 233
 Law Association, annual report, 345
 appointments, 52, 69, 84, 109, 168, 209, 228, 248, 310, 411, 512
 bills before parliament, 213
 reform, state of, 1
 Fire Insurance Society, 104
 Students' Debating Society, 206
 Union Insurance Company, 184
 Lawyers in parliament, 371
 Leaseholds, church, 223
 Life assurance agents, 364
 Local Courts of Equity, 233
 and Personal Acts, list of, 450, 470, 487, 509
 London, city of, recommendations of Commissioners, 49
 Commissioners to administer oaths in Chancery, 12, 146, 188, 330
 regulations, 28
 Lunacy, new orders, 299
- Manor of Kennington, 123, 140, 243, 266, 287, 302, 344, 426
 Married woman, acknowledgments of, 28, 146, 219, 248
 Marriage, breach of promise, 145
 Masters in Chancery, state of business, 262
 Medico-legal evidence, 442
 Mercantile Law, Commissioners report, 157
 differences in England and Scotland, 177, 203, 264, 385, 402
 Merrifield's Burgess's Manual, 324
 Metropolitan and Provincial Law Association, 9
 annual report, 141, 162, 183
 general meeting at Leeds, 408, 465, 495
 Mortmain Bill, restriction of personal bequests, 27, 77
- Newcastle-on-Tyne Borough Court, 409
 Notarial attestations, 245
 Notice to quit, 309
 Norwich Borough Court, 188
- Oaths in Chancery in Scotland, 205
 Obituary, legal, 207, 483, 504
 Official copies, charge for, 83
 Oke on Turnpike Roads, 46
 Orders in Chancery, 122, 140, 188
- Parish registers, 243
 Parliament, new members of, 69, 147, 431, 512
 returns:
 Chancery oral evidence, 51
 Parliament, returns, Comm on Law trials, 283
 Partnerships dissolved, 68, 146, 248, 330, 431, 512
 limited liability, 193, 393
 Patents, report of Commissioners, 463
 Paper suit, costs in, 125
 Pedigree evidence, 366
 Perpetual Commissioners, 68, 147, 247, 330, 431
 Postponed law bills, 273
 Pratt's Prize Courts, 123
 Privileges of solicitors as to serving office, 187
 Preston Borough Court, 409
 Prorogation of Parliament, 289
 Public General Acts, list of, 447
- Real estates charges, 237
 Receiving money out of Court, 30
 Record repository, 81
 Recorder of Hull, 228
 Recordship of Brighton, 407
 Rent-charge, franchise, 247
 Results of the last Session, 293
 Registration of deeds, 236
 Remuneration of solicitors, graduated percentage, 45, 133, 253, 287, 333
 Rivalry of superior and inferior Courts, 150
 Royal assents, 310
- Saturday half-holiday, 267, 282, 348, 430, 446, 469
 Settlements, voluntary, 48
 Sheriffs of London and Middlesex, 391
 Solicitors' bills of costs, warning as to, 406
 costs, nonpayment of, 348
 arrangements and regulation of their business, 373
 plan of accounts, 313
 Stamp Duties, 76, 136, 228, 455
 Acts, consolidation of, 482
 on agreement, 391
 Statutes, new, see *Contents*.
 construction of, 9, 31, 51, 80, 161, 262, 282, 304, 343, 390
 Law Commission, 258, 330
 revision and consolidation of, 413
 Story on the Common Law, 371
 Stowe, Mrs., on English Law and Lawyers, 390
 Succession Duty Act, 345
- Taxation of solicitors' costs, 169, 223, 239, 258, 280, 304, 343, 447, 502 And see *Costs*.
 Taxes on administration of Justice, see *Administration of Justice*.
 Testamentary Jurisdiction Bill, 77
 Trust Companies, Joint-Stock, progress of Bills, 73, 89, 113
 speech of counsel against, 89
 Tudor on Partnership, 137
 Tudor's Charitable Trusts' Act, 255
- United Law Clerks' Society:
 annual report of, 164
 annual meeting, 240
 Usury Laws repeal, 175
- Vacation business, 305
 Vendor and purchaser, 408, 429
 Vivâ voce examination in Chancery, 104
 Voluntary and incomplete settlements, 48
- Warwick Assizes Bill, 137
 Wife's equity to settlement, 309
 Witnesses' Bill, 25







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